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**HAZARDOUS MATERIALS TRANSPORTATION ACT,  
NATURAL GAS PIPELINE SAFETY ACT, AND HAZARDOUS  
LIQUID PIPELINE SAFETY ACT AUTHORIZATIONS**

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**HEARING  
BEFORE THE  
SUBCOMMITTEE ON SURFACE TRANSPORTATION  
OF THE  
COMMITTEE ON COMMERCE, SCIENCE,  
AND TRANSPORTATION  
UNITED STATES SENATE  
NINETY-SEVENTH CONGRESS**

**FIRST SESSION**

**ON**

**S. 960**

**A BILL TO AMEND THE HAZARDOUS MATERIALS TRANSPORTATION ACT TO ENCOURAGE A GREATER EFFORT IN THE PREVENTION AND RESPONSE TO TRANSPORTATION INCIDENTS INVOLVING HAZARDOUS MATERIALS, TO PROVIDE ASSISTANCE TO STATE AND LOCAL GOVERNMENTS IN PREVENTING AND RESPONDING TO SUCH INCIDENTS, AND FOR OTHER PURPOSES**

**APRIL 28, 1981**

**Serial No. 97-36**

**Printed for the use of the  
Committee on Commerce, Science, and Transportation**



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WASHINGTON : 1981**

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# **HAZARDOUS MATERIALS TRANSPORTATION ACT, NATURAL GAS PIPELINE SAFETY ACT, AND HAZARDOUS LIQUID PIPELINE SAFETY ACT AUTHORIZATIONS**

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**TUESDAY, APRIL 28, 1981**

**U.S. SENATE,  
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,  
SUBCOMMITTEE ON SURFACE TRANSPORTATION,  
Washington, D.C.**

The subcommittee met at 9:45 a.m., in room 235 of the Russell Senate Office Building, Hon. John Danforth (chairman of the subcommittee) presiding.

Senator DANFORTH. Today the Surface Transportation Subcommittee of the Committee on Commerce, Science, and Transportation will receive testimony on the handling and transportation of hazardous materials. These materials are essential to the commerce of this Nation, yet can create severe hazards to public safety if transported improperly.

Specifically, the committee will hear testimony on the reauthorization of the Hazardous Materials Transportation Act of 1974, National Gas Pipeline Safety Act of 1968, and the Hazardous Liquid Pipeline Safety Act of 1979.

Additionally, we will be considering testimony on S. 960, the Hazardous Materials Transportation Amendments of 1981.

## **OPENING STATEMENT BY SENATOR CANNON**

Senator CANNON. Mr. Chairman, over the past several years, issues relating to the transportation of hazardous materials have been of particular concern to the Commerce Committee. The volume of shipment of these materials by all modes has been increasing very rapidly, and the number of incidents each year involving transportation of hazardous materials is also increasing.

In view of the risks involved and potential for catastrophic accidents, it is essential that an adequate safety program be in place both to prevent incidents and to respond to incidents when they occur.

I am particularly sensitive to this problem because my own State of Nevada houses one of the three sites in this country where low-level nuclear waste is buried. The history of this site near Beatty, Nev., has been replete in recent years with accidents involving improperly packaged or labeled materials which have far too often leaked either from their containers or even from the trucks carrying them for disposal.

Scientists may debate whether there is serious harm to the public health from these accidents but I can guarantee you there is harm to the public confidence.

The situation has become so serious in southern Nevada that our Governor, Robert List, has called for lifting the Beatty site's license and closing it down altogether. So far the State board of health has not taken such action. But every incident of leaky cargo adds fuel to this fire and brings added pressure to do just that.

I would not like to see this site closed because of my concern over what that would mean to nuclear medicine and other beneficial uses of nuclear technology.

As I have mentioned, Beatty is one of only three burial sites in the entire country, so its closure would have a devastating impact on the tens of millions of people annually benefiting from nuclear medicine.

I am convinced that the long-term solution to this problem is development of local or regional waste disposal sites so we don't have trucks and trains transporting radiated material long distances through towns and cities. Until more States open burial sites however, we on this committee have the responsibility to see that the transportation is as safe as it can possibly be.

We acted last year on a bill, S. 535, for which Senator Schmitt deserves a great deal of credit, which would have gone a long way to solving many of the problems that have occurred at Beatty. Unfortunately, that bill was not acted on by the full Senate after we reported it in May.

The measure I have offered in this Congress, S. 960, is another attempt to improve our safety record. This legislation is intended to encourage greater effort in the prevention and response to transportation incidents involving hazardous materials and to provide assistance in responding to such incidents.

Just this month a report on cleanup of hazardous material spill from a punctured tank car in Summerville, Mass., found guidelines and advice from the Federal Government, the shipper and others to be "inadequate, inconsistent, and confusing." Now, this situation must be remedied.

I would emphasize that S. 960 is not in final form. Rather, the bill is intended as a vehicle for our deliberations as we attempt to address significant problems in the transportation of hazardous materials.

I welcome comments on S. 960 and any suggestions you may have for improving the legislation. We all share the same goal, to find ways through better training and inspection and improved cooperative efforts to prevent hazardous materials accidents and to protect the public health and safety.

I look forward to a very productive hearing in this regard, Mr. Chairman. Thank you very much.

Senator DANFORTH. Thank you, Senator Cannon. Senator Gorton.

#### OPENING STATEMENT BY SENATOR GORTON

Senator GORTON. Industrial growth in our society produces benefits such as jobs, revenues, and new consumer products. It also produces risks with which we must deal. One of these risks is the

generation of hazardous materials and the problems of transporting and storing them safely.

The Puget Sound area of Washington State is a major site for these activities. Takoma is the largest user, but Seattle, Canton are also major producers. Thus, the entire region must address the problem. The Puget Sound Council of Government 15-month study is a prototype cooperative effort which has drawn national attention.

It has involved in all the needed participants. Industries that produce, use, and transport the materials, local governments and emergency response agencies. It has established a dialog and sense of cooperation which is needed if we are going to be able to prepare for and respond to the risks presented by the storage and transportation of hazardous materials.

The first part of the Puget Sound study involved identifying all the hazardous materials moving through the region by type, mode of transportation, quantity, and so forth.

The second objective of the study was to determine the effectiveness and capability of current prevention and response systems of agencies. Third, the study looked at the experience of other regions with similar problems.

Finally, the study will try to formulate a comprehensive regional response. That study will be the subject of the testimony of one of today's witnesses. Today's testimony will be, in effect, a report to the Congress on the long and hard work put in by Puget Sound local governments, industry and other participants on the potential hazards people face from these substances.

Issues involved include routing requirements and proper level of Federal Government involvement in the regulation of routing. Training of response personnel so that they are prepared to react intelligently and promptly to accidents.

Coordination between governmental agencies and industry, defining who responds and how. The package—and packaging and labeling requirements so people can know what they are dealing with and how to handle it.

Thank you, Mr. Chairman.

Senator DANFORTH. Thank you, Senator Gorton.

[The bill follows.]



**97TH CONGRESS**  
**1ST SESSION**

# S. 960

To amend the Hazardous Materials Transportation Act to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials, to provide assistance to State and local governments in preventing and responding to such incidents, and for other purposes.

IN THE SENATE OF THE UNITED STATES

**APRIL 9 (legislative day, FEBRUARY 16), 1981**

**Mr. CANNON introduced the following bill; which was read twice and referred to the Committee on Commerce, Science, and Transportation**

# A BILL

**To amend the Hazardous Materials Transportation Act to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials, to provide assistance to State and local governments in preventing and responding to such incidents, and for other purposes.**

1 *Be it enacted by the Senate and House of Representa-*  
2 *tives of the United States of America in Congress assembled,*  
3 **That this Act may be cited as the "Hazardous Materials**  
4 **Transportation Act Amendments of 1981".**

## 5 FINDINGS AND PURPOSE

**6 SEC. 2. (a) The Congress finds that—**

1           (1) the transportation of hazardous materials can  
2           create severe hazards to the public safety;

3           (2) such transportation is nonetheless essential to  
4           commerce;

5           (3) in the interest of uniformity, the Hazardous  
6           Materials Transportation Act provides for the preemp-  
7           tion of State and local governmental regulation of haz-  
8           ardous materials transportation to the extent it is not  
9           consistent with Federal requirements and regulations;

10          (4) despite this preemption, when serious hazard-  
11          ous materials incidents occur, it is the State and local  
12          governments which necessarily have the primary re-  
13          sponsibility for emergency response; and

14          (5) increased coordination and greater consistency  
15          between the Federal Government and State and local  
16          governments would assist in the prevention of hazard-  
17          ous materials transportation incidents and in the over-  
18          all ability of State and local governments to respond to  
19          such incidents.

20          (b) It is the purpose of this Act to—

21               (1) promote the public safety by providing for in-  
22               creased coordination among the various levels of  
23               government and greater consistency among Federal,  
24               State and local rules and regulations;

5 (3) provide for greater assistance to State and  
6 local governments in responding to such incidents  
7 through coordinated and well-planned advice and as-  
8 sistance at the time of the incident, training and tech-  
9 nical assistance programs, and planning grants to en-  
10 courage the adoption of coordinated incident response  
11 programs.

## 12 DEFINITIONS

SEC. 3. Section 103 of the Hazardous Materials Transportation Act (49 U.S.C. 1802) is amended by redesignating paragraphs (3), (4), (5), (6), and (7), and all references thereto, as paragraphs (4), (5), (6), (7), and (8), respectively, and by inserting the following new paragraph immediately after paragraph (2):

19           “(3) ‘incident’ means any event occurring in the  
20       transportation of hazardous materials or a transporta-  
21       tion-related function such as loading, unloading, pack-  
22       aging or stowage which has led, or poses an imminent  
23       threat of leading, to a release of hazardous materials  
24       which could result in a serious risk to health, safety, or  
25       property;”.

7 "Subtitle B  
8 "DEPARTMENT OF TRANSPORTATION TRAINING FOR  
9 INCIDENT PREVENTION

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1 mines that existing training programs for the transportation  
2 of hazardous materials are inadequate or that there is need-  
3 less duplication among such programs, the Secretary is au-  
4 thorized to develop appropriate training programs and make  
5 recommendations as to how to improve existing programs.  
6 The Secretary shall upon request provide to State and local  
7 agencies and private organizations a description of training  
8 programs and such other assistance as is appropriate to assist  
9 such agencies and organizations in fulfilling their hazardous  
10 materials training needs.

11       “(c) The Secretary shall maintain within the Depart-  
12 ment an information dissemination service, which shall pro-  
13 vide instructional materials in the training, skills, and knowl-  
14 edge necessary to assist Federal, State, and local agencies  
15 and private organizations in training personnel in safe and  
16 proper methods for the transportation of hazardous materials.  
17 As part of such service, the Secretary shall identify specific  
18 elements with respect to training, equipment, and methodolo-  
19 gies necessary and useful in preventing incidents involving  
20 the transportation of hazardous materials. In addition, the  
21 Secretary shall identify training programs which he deter-  
22 mines through the evaluation required by subsection (a) of  
23 this section to be useful for training shippers, carriers, inspec-  
24 tors, or enforcement personnel with respect to hazardous ma-  
25 terials transportation safety. The Secretary is authorized to

1 take all necessary measures to improve the coordination and  
 2 effectiveness of all such Federal, State, local, and private  
 3 training programs.

4 “(d) As part of the effort to improve the coordination of  
 5 incident prevention training programs, the Secretary, to the  
 6 extent practicable, shall establish or encourage the establish-  
 7 ment of regional training centers.

8 “STATE REGULATION AND GRANTS TO STATES

9 “SEC. 121. (a) Under the terms and conditions of this  
 10 section, and subject to the availability of funds, the Secretary  
 11 is authorized to make grants to States for the development  
 12 and implementation of programs for the enforcement of Fed-  
 13 eral rules, regulations, standards, and orders applicable to  
 14 hazardous materials transportation pursuant to the provisions  
 15 of this title and consistent State rules, regulations, standards,  
 16 and orders.

17 “(b)(1) The Secretary shall, after notice and opportunity  
 18 for comment by interested parties, formulate procedures for  
 19 any State to submit a plan whereby the State agrees to  
 20 adopt, and to assume responsibility for enforcing, rules, regu-  
 21 lations, standards, and orders issued under this title and con-  
 22 sistent State rules, regulations, standards, and orders. Such  
 23 plan shall be approved by the Secretary if he determines that  
 24 the plan promotes the objectives of this title, and the plan—

1           “(A) designates the State agency or agencies re-  
2       sponsible for administering the plan throughout the  
3       State;

4           “(B) contains satisfactory assurances that such  
5       agency has or is taking steps pursuant to State law to  
6       have the legal authority, resources, and qualified per-  
7       sonnel necessary for the enforcement of such rules,  
8       regulations, standards, and orders;

9           “(C) gives satisfactory assurances that such State  
10      will devote adequate funds to the administration of  
11      such plan and enforcement of such rules, regulations,  
12      standards, and orders;

13          “(D) provides a right of entry and inspection suffi-  
14      cient to enforce the provisions of this title; and

15          “(E) provides that such State agency will adopt  
16      such uniform reporting requirements and use such uni-  
17      form forms for recordkeeping, inspections, and investi-  
18      gations as may be established and required by the Sec-  
19      retary.

20          “(2) If a plan submitted under paragraph (1) of this sub-  
21      section is rejected, the Secretary shall provide the State with  
22      a written explanation of his action and shall permit the State  
23      to modify and resubmit its proposed plan for approval, in ac-  
24      cordance with the procedures formulated pursuant to such  
25      paragraph.

1       “(c) The Secretary shall, on the basis of reports submit-  
2   ted by the State agency, and on his own inspections, make a  
3   continuing evaluation of the manner in which each State with  
4   a plan approved under this section is carrying out such plan.  
5   Whenever the Secretary finds, after affording due notice and  
6   opportunity for comment, that a State plan previously ap-  
7   proved is not being followed or that it has become inadequate  
8   to assure the enforcement of rules, regulations, standards, or  
9   orders issued under this title, he shall notify the State of  
10  withdrawal of approval of such plan. Upon receipt of such  
11  notice, such plan shall cease to be in effect. Any State ag-  
12  grieved by a determination of the Secretary pursuant to this  
13  subsection may seek judicial review pursuant to chapter 7 of  
14  title 5, United States Code. The State may, however, retain  
15  jurisdiction in any case commenced before the withdrawal of  
16  the plan whenever the issues involved do not directly relate  
17  to the reasons for the withdrawal of approval of the plan.

18       “(d) By grants authorized under this section, the Secre-  
19  tary shall reimburse any State in an amount not to exceed 50  
20  percent of the costs incurred by that State in that fiscal year  
21  in the development and implementation of programs to en-  
22  force hazardous materials transportation rules, regulations,  
23  standards, or orders issued under this title and consistent  
24  State rules, regulations, standards, and orders. The Secre-  
25  tary is authorized to allocate amounts appropriated for grants



1 to support such programs among the States whose applica-  
 2 tions for grants have been approved pursuant to such criteria  
 3 as may be established.

4 "ROUTING AND PRENOTIFICATION.

5 "SEC. 122. (a)(1) Within 18 months after the date of en-  
 6 actment of this section, the Secretary shall, in consultation  
 7 with State, local, and regional governments and with appro-  
 8 priate Federal agencies, determine whether to issue regula-  
 9 tions in accordance with the provisions of this section and  
 10 pursuant to section 105 of this title with respect to the rout-  
 11 ing of hazardous materials being transported in interstate  
 12 commerce. If the Secretary determines that regulations  
 13 should not be issued, a report shall be submitted to Congress  
 14 stating why such regulations are not necessary.

15 "(2) If the Secretary issues regulations pursuant to  
 16 paragraph (1) of this subsection, such regulations shall pro-  
 17 vide for the participation by State, local, and regional gov-  
 18 ernments in selecting preferred routes and modes of transpor-  
 19 tation of hazardous materials within their respective jurisdic-  
 20 tions.

21 "(3) In determining whether to promulgate regulations,  
 22 the Secretary shall consider—

23 "(A) the question of whether any mode presents  
 24 an unacceptable level of risk to safety with respect to  
 25 the transportation of hazardous materials;

1           “(B) various factors affecting the safety of any  
2       given route, including, but not limited to, population  
3       density, design characteristics of the route, and adja-  
4       cent land uses;

5           “(C) the implementation of additional protective  
6       measures whenever hazardous materials are transport-  
7       ed through areas of particularly high risk;

8           “(D) the social, economic, and commercial im-  
9       pacts of routing restrictions; and

10          “(E) the relative hazard potential of specific haz-  
11       ardous materials as a factor determining the need for  
12       selective routing.

13          “(b)(1) Within 12 months after the date of enactment of  
14       this section, the Secretary shall submit a report to Congress  
15       with respect to the feasibility, cost, desirability of establish-  
16       ing, and the problems of implementing, a prenotification  
17       system which would inform State or local governments in  
18       advance of the timing, nature, and routing of hazardous ma-  
19       terials shipments through their jurisdictions.

20          “(2) In preparing such report, the Secretary shall con-  
21       sult with State, local, and regional governments and with  
22       appropriate Federal agencies, and shall seek the advice of  
23       various groups interested in the safety of the transportation  
24       of hazardous materials, including shippers, carriers, and users  
25       of hazardous materials and bulk package or container manu-

1   facturers; organizations which represent employees engaged  
2   in the transportation of hazardous materials; citizens' and en-  
3   vironmental groups; and private organizations concerned  
4   with transportation safety or the provision of emergency  
5   services in response to a major accident involving the trans-  
6   portation of hazardous materials.

7       “(c) In order to acquire information in accordance with  
8   this section, the Secretary may establish one or more demon-  
9   stration projects.

10   “FEDERAL TRAINING PROGRAMS FOR INCIDENT RESPONSE

11       “SEC. 123. (a) The Director of the Federal Emergency  
12   Management Agency, in coordination with the Secretary and  
13   other agencies with responsibilities relating to hazardous ma-  
14   terials transportation, shall conduct a study and evaluation of  
15   programs conducted by Federal, State, and local agencies  
16   and private organizations which provide training to agencies  
17   or organizations responsible for responding to incidents in-  
18   volving hazardous materials transportation. Not later than 6  
19   months after the date of enactment of this section, the Direc-  
20   tor shall submit an interim report on the results of such eval-  
21   uation. Not later than 12 months after the date of enactment  
22   of this section, the Director shall complete such study and  
23   evaluation and submit the results of such study, along with  
24   such recommendations as he deems necessary, to the  
25   Congress.

1       “(b) If, as a result of the study and evaluation conducted  
 2 pursuant to subsection (a) of this section, the Director deter-  
 3 mines that existing training programs are inadequate, the Di-  
 4 rector, in coordination with the Secretary, is authorized to  
 5 develop appropriate training programs. The Director or the  
 6 Secretary shall, upon request, provide to State and local  
 7 agencies and private organizations a description of training  
 8 programs and such other assistance as is appropriate to assist  
 9 such agencies and organizations in fulfilling their incident re-  
 10 sponse training needs.

11       “(c) The Director or the Secretary, as they deem appro-  
 12 priate, shall maintain an information dissemination service,  
 13 which shall provide instructional materials in the training,  
 14 skills, and knowledge necessary to assist Federal, State, and  
 15 local agencies and private organizations in training personnel  
 16 in safe and proper methods for responding to incidents. Such  
 17 information service shall identify specific elements with re-  
 18 spect to training, equipment, and methodologies necessary  
 19 and useful in responding to incidents. In addition, training  
 20 programs shall be identified which are determined through  
 21 the evaluation required by subsection (a) of this section to be  
 22 useful for training response personnel.

23       **“EMERGENCY RESPONSE PLANNING GRANTS**

24       **“SEC. 124. (a)** In order to promote the development of  
 25 coordinated and effective emergency response programs for

1 incidents at the State and local levels, the Director of the  
2 Federal Emergency Management Agency is authorized,  
3 taking into account consistency with the national contingency  
4 plan, as revised pursuant to the provisions of the Comprehen-  
5 sive Environmental Response, Compensation, and Liability  
6 Act of 1980, to make emergency response planning grants to  
7 units of State, regional, and local government. Such grants  
8 shall be used, among other things, to—

9       “(1) assess the present response capabilities of  
10 each emergency response agency within the scope of  
11 the study area in terms of the adequacy of trained per-  
12 sonnel, equipment, and information systems and deter-  
13 mine the most cost-effective means for upgrading such  
14 capabilities;

15       “(2) determine at what point and to what extent  
16 each such agency will become involved in the response  
17 to a given incident;

18       “(3) determine which of such agencies will be the  
19 lead agency for responding to a given type of incident  
20 at any given location;

21       “(4) define the role of each such agency in re-  
22 sponding to any incident; and

23       “(5) establish a communications network that will  
24 permit onsite interagency communications as well as  
25 operational and command communications.

1       “(b) The Director shall, within 12 months, establish  
 2 such rules and regulations as he deems necessary for the ad-  
 3 ministration of emergency response planning grants described  
 4 in subsection (a) of this section. Any such regulations shall  
 5 provide that—

6               “(1) the Federal share of any such planning grant  
 7 shall not exceed 50 percent of the cost of such project;  
 8 and

9               “(2) no less than 25 percent of the funds obligated  
 10 for such planning grants shall be used to make plan-  
 11 ning grants to units of regional or local government.

12       “(c) To the extent possible, the Director shall encourage  
 13 the use of such planning grants to promote planning for the  
 14 establishment of coordinated regional emergency response  
 15 programs.

16               “RESEARCH AND DEVELOPMENT

17       “SEC. 125. The Director of the Federal Emergency  
 18 Management Agency, in coordination with the Secretary, is  
 19 authorized to conduct research and development activities  
 20 designed to improve the capabilities of Federal, State, local,  
 21 and private agencies and organizations responsible for re-  
 22 sponding to an incident. Such activities may include, among  
 23 other things, programs to—

1           “(1) encourage the development and demonstra-  
2           tion of new and innovative techniques in responding to  
3           incidents;

4           “(2) evaluate existing techniques and programs for  
5           responding to incidents; and

6           “(3) promote the development and adoption of  
7           minimum standards for training, equipment, coordina-  
8           tion, information, and other resources related to re-  
9           sponding to incidents.

10           “AUTHORIZATIONS FOR APPROPRIATIONS

11           “SEC. 126. (a) There is authorized to be appropriated to  
12           the Secretary such sums as may be necessary for the pur-  
13           poses of section 121 of this subtitle.

14           “(b) There is authorized to be appropriated such sums  
15           as may be necessary to the Federal Emergency Management  
16           Agency for the purposes of section 124 of this subtitle.”.

17           REPORTING SYSTEM AND DATA CENTER

18           SEC. 5. Section 109(d) of the Hazardous Materials  
19           Transportation Act (49 U.S.C. 1808(d)) is amended—

20           (1) by inserting “(1)” immediately before “The  
21           Secretary”;

22           (2) by redesignating paragraphs (1), (2), and (3) as  
23           subparagraphs (A), (B), and (C), respectively; and

24           (3) by adding at the end thereof the following new  
25           paragraph:

1           “(2) Nothing in this subsection shall be construed  
2           to limit the authority of the Secretary to enter into a  
3           contract with a private entity for use of a supplemental  
4           reporting system and data center operated and main-  
5           tained by such entity.”.

6                               CONFORMING AMENDMENTS

7           SEC. 6. Sections 110, 111, and 115 of the Hazardous  
8           Materials Transportation Act (49 U.S.C. 1809, 1810, and  
9           1812) are amended by striking “title” wherever it appears  
10          and inserting in lieu thereof “subtitle” in each such place.





Senator DANFORTH. The first witness is Mr. Howard Dugoff, Administrator, Research and Special Programs Administration, Department of Transportation.

**STATEMENT OF HOWARD DUGOFF, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION, DEPARTMENT OF TRANSPORTATION, ACCOMPANIED BY LEE SANTMAN, DIRECTOR, MATERIALS TRANSPORTATION BUREAU**

Mr. DUGOFF. Thank you, Mr. Chairman. I am very pleased to appear before this subcommittee today to discuss the Research and Special Programs Administration's hazardous materials and pipeline safety programs.

I am accompanied by the Director of our Materials Transportation Bureau, Mr. Lee Santman. We have prepared a comprehensive statement for the hearing record which, with your permission, I will summarize at this time.

I will first address our hazardous materials program.

As you may recall, the Department last year undertook a major initiative to upgrade our hazardous materials transportation safety program within responsible spending limits. With the strong support of this subcommittee, our efforts resulted in a fiscal year 1981 appropriation for the program more than double the prior year level. As a consequence, we have begun to implement important program improvements.

Under the HMTA we bear responsibility for the establishment and enforcement of effective uniform standards to protect the public health and safety without imposing undue costs or impediments to Commerce. Because of the vast disparity in size between the regulated population and the Federal enforcement staff, the enforcement of our hazardous materials regulations must depend upon a Federal-State partnership in order to be effective.

Our approach toward the forging of such a partnership is to encourage States to adopt Federal regulations in place of inconsistent State and local rules. State adoption and enforcement of Federal standards reduces regulatory burden on industry by presenting them with a single set of regulations for compliance.

Because the States already have law enforcement officials in the field, there is no need to create additional organizations to enforce the regulations.

However, effective training of State inspection and enforcement personnel in the Federal regulations is essential to the success of this effort. Thus, we are implementing major new training programs to provide appropriate assistance.

In the past, we have provided centralized training to State personnel at our transportation safety institute in Oklahoma City. Starting this year we are augmenting the centralized training program by helping to develop regional training centers to provide training for both State personnel and members of the regulated community in how to use and comply with the Federal hazardous materials regulations.

Our approach is to share with interested participants in the startup costs of a regional training center and to provide continuing technical support and guidance in their training. The regional

training centers will also provide training in emergency response to hazardous materials transportation accidents.

Because of the infinite numbers of possible accident sites, the wide range of materials that may be involved and the usually critical need for immediate action, States and local jurisdictions must play the primary role in responding to transportation emergencies.

To acquire the necessary capability, State and local personnel must identify their particular problems and needs and implement their own community plans for emergency response. But the Federal Government can help and we have already moved to do so through the support of program development and demonstration projects whereby local governments or planning units help to survey current physical and institutional frameworks for emergency response, and determine what they need to do the job right.

Senator Gorton has mentioned the first pilot program of this nature at Puget Sound. You will hear testimony today about the project. I trust you will share our judgment that this program is a very fine effort and promises to pay off not just with respect to benefits for the local community, but by providing knowledge which can be generalized and applied productively to other communities around the country.

In addition to supporting local planning and training efforts, we are providing emergency response assistance in several other ways. We have issued, and are expanding distribution of our hazardous materials emergency response guide book, a concise index reference tool which provides on-scene officials with detailed guidance for swift and precise response to transportation emergencies involving more than 1,600 different hazardous materials.

I will leave a copy of the guidebook with the committee for your review.

We have also worked together with the Coast Guard to extend the capability of its National Response Center to deal with land-based pipeline accidents, hazardous waste spills and hazardous materials accidents. We have linked the National Response Center with the Chemical Emergency Transportation Center, an emergency response information service of the Chemical Manufacturers Association.

CHEMTREC enjoys access to proprietary information for dealing with emergencies which individual firms would be reluctant to share with the Federal Government. Thus, it provides a unique and vital service in dealing with the containment of hazardous incidents.

In January we completed action on a final rule establishing regulations for the highway transportation of radioactive materials. Under this rule, appropriate State agencies are empowered to designate routes to be used by trucks carrying high-level shipments of radioactive materials based on analysis of risk factors and careful consideration of the views of city and county officials. To assist the states in this process, the department will soon issue guidelines for the selection of such preferred highway routes.

Much of the emphasis in the recent rulemaking was on anticipated future shipments of spent nuclear fuels. Currently, there is little movement of such shipments and this is likely to remain the case

until one or more permanent spent fuel repositories are established. Department of Energy is now evaluating potential repository sites and will eventually establish several repositories.

As the selection process moves ahead, we expect the transportation alternatives, but modal and route choices, to become clearly identified. We also expect to be called upon to evaluate the transport alternatives and plans that develop.

Growing emphasis on cost benefit analysis of existing and prospective regulations imposes a growing requirement for the acquisition and analysis of quantitative information of both a statistical and engineering nature.

To respond appropriately to this need, we have undertaken development of a comprehensive hazardous materials information system which will provide us with quick retrieval capability for such needed information as commodity flows, indices of regulations and exemptions, accident and incident data, technical information, enforcement and inspection activity, emergency response information from both the National Response Center and CHEMTREC, and budget and program plans.

The new information system will integrate data sets currently maintained by the Federal Highway Administration, the Federal Railroad Administration and the National Response Center as well as the existing MTB reporting systems.

This consolidation will reduce administrative burdens both for us and the regulated industries by eliminating redundant and unnecessary reporting requirements and by limiting the amount of manual processing of information needed for the department to perform its duties.

Now I am going to turn to a discussion of our pipeline safety program. As has been noted, the Pipeline Safety Act of 1979 brought major substantive changes to our underlying authorities in this field. I therefore believe it is appropriate to highlight some of our major pipeline safety activity since that legislation was enacted.

The most important features of the 1979 law were the creation of the Hazardous Liquid Pipeline Safety Act which established a new statutory basis for our liquid pipeline safety regulatory program, and improvements in the enforcement authorities under the National Gas Pipeline Safety Act.

Prior to the 1979 legislation, our enforcement authorities for the most part were civil penalties for violation of gas regulations, and criminal penalties for violation of liquid regulations. The 1979 law provided a comprehensive set of enforcement tools for both the new liquid and amended gas law. These included compliance and hazardous facility order authority in addition to both civil and criminal sanctions.

The equitable new remedies of compliance and hazardous facility orders have proven most beneficial. Our written statement cites several examples of how each has already been used effectively under appropriate circumstances.

The activities of our Office of Operations and Enforcement, which includes the five regional offices, cover a wide range of actions aimed at enhancing performance of the nearly 250 State and Federal inspectors involved in the pipeline safety program.

Much of the activity of the Enforcement and Operations staff is of a recurring nature. This includes evaluating State gas pipeline programs, administering the associated grant program, conducting inspections and taking necessary followup enforcement actions, and continuing to improve the effectiveness of our headquarters and regional enforcement efforts.

Of particular importance during the next 2 years will be actions to implement the Federal-State cooperative program authorized under the new Hazardous Liquid Pipeline Safety Act. The act provides for State agencies to assume a major role in the regulation of intrastate hazardous liquid pipelines, paralleling the role for State agencies regarding natural gas pipelines under the Natural Gas Pipeline Safety Act.

A State agency can assume responsibility for enforcement of the safety standards as they apply to intrastate hazardous liquid pipelines either by annual certification of its authority and enforcement activities or through a written agreement to carry out inspections with enforcement remaining a Federal function.

Senator DANFORTH. Mr. Dugoff, I don't want to cut you needlessly short, but we do have a time limitation. I wonder if you could wind it up pretty quickly.

Mr. DUGOFF. I will. The written statement describes our efforts over the past 2 years to implement this new set of authorities, describes the polling and analysis we have done of existing State programs, and explains how we intend to bring this new activity on stream.

We discuss, in addition, our efforts to implement more new regulations concerning LNG facilities which are of particular interest to the committee. And then we describe and present status reports on the whole domain of rulemaking which we have accomplished since we last appeared before the committee. We discuss at some length and provide examples of an important aspect of our program, namely, a review of existing regulations to ascertain whether their benefits continue to outweigh the costs they impose.

I believe that is a sufficient summary.

Senator DANFORTH. Thank you very much, sir.

Senator Cannon.

Senator CANNON. Mr. Dugoff, there is continuing concern in my State with regard to transportation of radioactive shipments from the Beatty site. I have asked you in the past as a followup to other hearings what was being done to improve the safety of these movements. Could you give me an update at this time?

Mr. DUGOFF. Yes, Senator Cannon. I will ask Mr. Santman to provide some detail. In general we have, at the request of the Governor and the State officials concerned, worked together with State officials and with the Nuclear Regulatory Commission (NRC) to attempt to be of assistance. We established an inspection program with the Bureau of Motor Carrier Safety working with those other agencies and have attempted to provide as much assistance as possible to the State.

Let me ask Mr. Santman to discuss the current status of our efforts and the situation at Beatty today.

Mr. SANTMAN. Senator Cannon, a series of things have taken place. First of all, the Nuclear Regulatory Commission has expand-

ed their efforts at the shipper facilities that they license, in addition to looking at the things they normally have looked at in the past. They have added to their checkoff list working with our transportation people, looking at what has happened on the loading docks in the preparation of shipments that would be going to a place like Beatty or Hanford.

Second, in both the States of Washington and Nevada—we already had such a program in South Carolina, the third low-level waste site—we have entered into a funding arrangement to support increased state inspection activity. In the case of Nevada, we entered into that agreement in September of last year with the Division of Health, State Department of Human Resources.

Among the things that it will be doing with our technical and financial assistance is to monitor major airports, primarily in Reno and Las Vegas, and monitor major truck terminals in those cities; also at the site at Beatty. The funding will go to the State inspection station at Beatty to examine received shipments to determine whether they are in compliance both with the Federal standards and the standards that are peculiarly applicable to the Beatty site.

Senator CANNON. Are there less violations now that the inspection process has been put into effect?

Mr. SANTMAN. The level of violations detected across the country at all three of the low-level waste sites have shown a decrease. I think the shippers' attention has been gotten by a combination of Federal and State efforts. There still are foulups that occur. But I think the frequency and seriousness of them has been reduced.

Senator CANNON. Are there further actions that you recommend should be taken now?

Mr. SANTMAN. Well, of course, the catching of the problem on the front end in the preparation stage is always the best medicine. We are increasing our efforts at working with the shipper community and the States, the State inspectors that are located in the States where the shipments originate. Again, although not many shipments originate in Nevada, their State program calls for inspection of the packaging of the materials at the shipper's site.

So I think that is where the best increased payoff we can see in the future is, catching it at the front end of the cycle.

Mr. DUGOFF. Senator, we have also been working with the Department of Energy and the State Planning Council toward the development of a regional-State managed compact system, such as I believe you referred to earlier and expressed the judgment that that was the most effective long-term solution. We share that view and are helping to support the development of such a program, and working closely with State Planning Council.

Senator CANNON. Thank you, Mr. Chairman.

Senator DANFORTH. Thank you.

Senator GORTON.

Senator GORTON. I take it that this final rule on routing regulations for radioactive materials is, with all of the State cooperation requested, preempted nevertheless?

Mr. DUGOFF. That is correct, Senator.

Senator GORTON. Do you think it would be possible to create a rational routing system without Federal preemption?

Mr. DUGOFF. I do not believe so. I think the track record demonstrates that in the absence of a uniform Federal standard, a plethora of State and local regulations which have the effect of totally prohibiting transportation through the jurisdictions issuing regulations is inevitable. If one community institutes such a ban, the neighboring community, whose highways receive the overflow from the community that issued the ban, tends to seek to retaliate, if you will.

The inevitable effect, it seems to me, is that transportation of nuclear materials will either be effectively choked off or distances of travel will be increased enormously and circuitous routes over back roads will be required, which will have the net effect of creating additional safety hazards, not reducing hazards.

Senator GORTON. But you did defer to what you considered the maximum extent the State and local sensibilities in the process?

Mr. DUGOFF. We have made the most sincere efforts to devise a scheme where the legitimate concerns of the State and local governments and people can be factored into the ultimate determination of the routes. We vested authority in the States to designate preferred routes as substitutes for the general scheme that we put forward. But we require the States in exercising that authority to consult with the affected local jurisdictions, and we indicate the kind of consultation process we believe is a prerequisite.

Senator GORTON. You still are faced with some resistance in some States?

Mr. DUGOFF. Oh, yes, we are.

Senator GORTON. Is the rule likely to be the subject of a legal challenge?

Mr. DUGOFF. I believe the rule has already been challenged. Let me ask Mr. Santman to check on this, but I believe it has.

Mr. SANTMAN. Suit has been filed by the city of New York.

Senator GORTON. Thank you, Mr. Chairman.

Senator DANFORTH. Mr. Dugoff, the Department did not specify what its anticipated needs would be for fiscal year 1983 and suggested only such sums as may be necessary. Can you be a little more helpful to us, for all three bills?

Mr. DUGOFF. Mr. Chairman, I can't be very definitive. We are only now in the process of defining requirements for the fiscal 1983 budget. We are doing it in the context of strong administration intent to minimize the Federal budget.

On the other hand, these programs are ones which are deemed extremely important. I have speculated in testimony before other committees that perhaps the best number to use as a working estimate is the same as the fiscal 1982. But I can't profess to be confident.

Senator DANFORTH. That would be so for all three programs?

Mr. DUGOFF. Yes, Mr. Chairman.

Senator DANFORTH. Thank you very much.

[The statement follows:]

STATEMENT OF HOWARD J. DUGOFF, ADMINISTRATOR, RESEARCH AND SPECIAL PROGRAMS ADMINISTRATION

I am pleased to appear before this Subcommittee today to discuss the Research and Special Programs Administration's hazardous materials and pipeline safety programs. My testimony is divided into separate discussions of these programs

because of their distinct nature. I will first address our hazardous materials program activities and the authorizations of \$8,332,000 for fiscal year 1982 and such sums as may be necessary for fiscal year 1983 that are requested under Senate bill — in support of those activities.

Our budget request to Congress last year reflected our determination to upgrade our Hazardous Materials Transportation Safety Program within responsible spending limits. Although the Congress did not complete a fiscal year 1981 authorization bill, our request for appropriations, based on the same planning proposals, was approved and we have begun to implement important program improvements.

#### FEDERAL/STATE RELATIONSHIP

In carrying out our mandated responsibilities under the Hazardous Materials Transportation Act, we are keenly aware of the economic and social impacts of our actions. As a consequence, our programs are predicated upon a carefully circumscribed Federal role and strong complementary relationships with State and local governments and the private sector. We are charged with the responsibility to establish effective, uniform hazardous materials transportation standards designed to protect the public health and safety without imposing undue costs or impediments to commerce. While we are also expected to assure compliance with these standards, we cannot mount a nationwide Federal enforcement effort that would provide the necessary level of inspection to deter violations across all transport modes.

Because of the vast disparity in size between the regulated population and the Federal enforcement staff, the enforcement of our hazardous materials regulations must depend upon a Federal/State partnership in order to be effective. To increase the overall national inspection and enforcement effort, we are encouraging the states to apply their existing enforcement resources to hazardous materials transportation safety.

Our approach is to provide states with an incentive to adopt Federal regulations in place of inconsistent State and local rules. State adoption of the Federal Hazardous Materials Regulations (Title 49, Parts 100-199) provides a single comprehensive, uniform set of nationwide standards. This uniformity not only simplifies inspection and enforcement activities for State personnel—it also simplifies compliance by the regulated population.

State adoption and enforcement of Federal Standards reduces the regulatory burden on industry by employing a single set of regulations for compliance. Because the states already have law enforcement officials in the field, there is no need to create additional organizations to enforce the hazardous materials regulations. The assignment of the appropriate agency within a particular state can be made by the state based upon an evaluation of its own capabilities and resources. In most instances, we believe there already exists a State agency which could assume the local inspection and enforcement responsibility. Training of State inspection and enforcement personnel in the Federal Regulations is essential to the success of such Federal/State effort.

#### TRAINING

In conjunction with our existing training program, we will be enlisting a number of State safety training facilities as Regional Training Centers to provide regional training for both State inspectors and enforcement personnel and members of the regulated community in how to use and comply with the Federal hazardous materials regulations. The centers will also provide training in emergency response to hazardous materials transportation accidents. These Regional Training Centers will receive the largest funding portion, \$400,000 of an expected total outlay of \$950,000, for training operations in our fiscal year 1982 budget. Our approach is to share with the interested participants in the start-up costs of a Regional Training Center, and to provide technical support and guidance in their delivery of training.

In the past, we have relied almost entirely on training being done at our Transportation Safety Institute in Oklahoma City. In the future, we will use the Regional Training Centers to supplement this training effort and bring it closer to State, local and industry students.

#### EMERGENCY RESPONSE

In fiscal year 1982, we plan to continue providing guidance for State and local officials in planning for how they will deal with hazardous materials emergencies. Effective emergency response requires a network of knowledgeable and trained emergency crews. The infinite number of possible accident sites, the wide range of materials that may be involved and the usually critical need for immediate action

are the principal reasons that state and local jurisdictions have the primary role in responding to transportation emergencies. To acquire this capability, State and local personnel themselves must identify their particular problems and needs, and implement their own community plans for emergency response. We have earmarked \$500,000 for program development and demonstration projects, whereby local governments or planning units will be helped to survey current physical and institutional frameworks for emergency response in a given area, determine what they need to do the job right, and plan to obtain it. We are close to completing one such project conducted through a cooperative agreement with the Puget Sound Council of Governments. Already, much of the planning methodology developed in this project has been adopted and is being used in other communities.

In addition to supporting local planning efforts, we are providing emergency response assistance in several other ways. For example, we have earmarked \$500,000 to expand distribution of the Hazardous Materials Emergency Response Guidebook which we issued last Fall. This Guidebook is a concise indexed reference tool which provides on-scene officials with detailed guidance for swift and precise response to transportation emergencies involving more than 1,600 different hazardous materials.

We have worked together with the U.S. Coast Guard to extend the capability of its National Response Center to deal with land-based pipeline accidents, hazardous waste spills, and hazardous materials accidents. Additional, we have linked the National Response Center with the Chemical Emergency Transportation Center (CHEMTREC), an emergency response information service of the Chemical Manufacturers Association. CHEMTREC enjoys access to proprietary information for dealing with emergencies which individual firms would be reluctant to share with the Federal government, and thus it provides a vital service in dealing with the containment of hazardous incidents. As we started to do this year, we will provide \$250,000 in fiscal year 1982 to the Coast Guard to perform its extended Response Center role.

#### RADIOACTIVE MATERIALS TRANSPORT

In January of this year, we issued a Final Rule (HM-164) establishing specific routing regulations for the highway transportation of radioactive materials, including spent fuel. The requirements of the rule are based on the type of radioactive material shipped and the quantity—or activity—per shipment. As a result, it is applicable to a very wide range of commodities and materials and applies to routings between thousands of pairs of points. The rule will be effective on February 1, 1982.

The states will play a key role in selection of highway routes to be used by trucks carrying high-level shipments of radioactive materials under HM-164. While the regulation will preempt State and local restrictions which are inconsistent with DOT's rule, it offers much more flexibility to the states than was contemplated in a rule DOT proposed a year ago. Under the Final Rule, appropriate State agencies are encouraged to designate preferred routes based on analysis of risk factors and careful consideration of the views of city and county officials. States have the resources to conduct routing analyses and can consider local viewpoints. To assist the states in their selection processes, DOT will soon issue guidelines for the states prescribing methods for selecting preferred routes.

Much of the emphasis on this rulemaking was on anticipated future shipments of spent nuclear fuel. Currently, there is little movement of such shipments. This is likely to remain so until one or more permanent repositories are established.

The Department of Energy (DOE) is now evaluating potential repository sites and identifying specific candidates, and will eventually establish several such repositories. As the selection process moves ahead, we expect the spent fuel transportation alternatives—both modal and route choices—to become clearly identified by DOE. We also expect DOT to be called upon to evaluate the transport alternatives and plans that develop.

#### INFORMATION AND ANALYSIS

The great emphasis now placed on cost-benefit analysis of prospective regulations, places a substantial burden on us to develop and analyze quantitative information of both a statistical and engineering nature. An effective monitoring and inspection program is dependent on assembling correct information and its proper application.

To respond appropriately to these needs, we are requesting a total of \$500,000 for development of system software for our hazardous materials information system (HMIS). In broad terms, the objectives of the HMIS are to (1) determine needs for new regulations and changes in existing ones, (2) support administration of the



regulatory program including compliance and enforcement, and (3) improve coordination between MTB, DOT modal administrations, other government agencies, and parties outside of the Federal government. On the rulemaking side, we will be using HMIS for such activities as forecasting changes in transportation patterns, identifying trends and performing risk analyses and assessments, and improving the ability to provide economic, environmental, and cost/benefit analyses of proposed regulations. We will also use the system to evaluate effectiveness and enforceability of those proposals.

With the establishment of the HMIS, we expect to have quick retrieval capability on such matters as commodity flow, indices of all regulations and exemptions; accident and incident data; technical information enforcement and inspection activity; emergency response information from NRC and CHEMTREC; and budget and program plans. Improved coordination through HMIS will be assisted by integrating data systems of the Federal Highway Administration, the Federal Railroad Administration, and the National Response Center, as well as existing MTB reporting systems.

This expected to reduce administrative burdens both for us and for the regulated industries, by eliminating redundant and unnecessary reporting requirements and by limiting the amount of manual processing of information needed for the Department to perform its duties.

This completes my prepared remarks on our hazardous materials program. I will now turn to a discussion of our pipeline safety programs.

Senate bill \_\_\_\_\_ would amend the Natural Gas Pipeline Safety Act of 1968 and the Hazardous Liquid Pipeline Safety Act of 1979, to authorize appropriations for Fiscal Years 1982 and 1983 in support of our pipeline safety programs.

Under the gas Act, we are requesting an authorization of \$7.064 million for Fiscal Year 1982, \$3.446 million of which is for administration, operation, and research expenses associated with the MTB gas pipeline program. The remaining \$3.618 million would be used as grant-in-aid monies in support of State administered gas pipeline safety programs.

Under the hazardous liquid Act, our authorization request for Fiscal Year 1982 is for \$1 million, all of which would be used to meet MTB's expenses in carrying out the Federal liquid pipeline safety program.

Under both these Acts, authorization for such sums as may be necessary is requested for Fiscal Year 1983.

As you are aware, the Pipeline Safety Act of 1979, established, for the first time, separate appropriation authorities for MTB's gas and hazardous liquid pipeline safety programs. It was during this Committee's consideration of that 1979 legislation that we last appeared before you to discuss these programs.

Because the 1979 legislation also brought major substantive changes to our underlying authorities, I believe it is worthwhile to highlight MTB's pipeline safety regulatory and enforcement activities since the legislation was enacted.

The most important aspects of the 1979 law were the creation of the Hazardous Liquid Pipeline Safety Act which established a new statutory basis for MTB's liquid pipeline safety regulatory program and the improvements to MTB's enforcement authorities under the Natural Gas Pipeline Safety Act.

The new liquid Act was closely patterned after the gas pipeline law in the belief that the liquid program could be best carried out within the same administrative and legal framework as the gas pipeline program. That belief is best reflected by similarities between the two laws on enforcement authorities, jurisdiction coverage of the laws, and the Federal/State cooperative programs authorized.

Prior to enactment of the 1979 legislation, MTB's enforcement authorities for the most part included only civil penalty sanctions for violations of gas pipeline regulations and criminal penalties sanctions for violations of the liquid regulations. These limitations proved to be a serious impediment to effective enforcement programs. The 1979 law corrected this impediment by providing MTB with a comprehensive set of enforcement tools under both the new liquid pipeline safety law and the amended gas law. These tools include civil and criminal penalties, injunctive relief, and compliance order and hazardous facility order authority. MTB desired to make early use of the newly provided enforcement authorities, and moved quickly to publish comprehensive procedures on how MTB would exercise the authorities. Those procedures were published in final form in the Federal Register on March 27, 1980.

The new equitable remedies of injunction and compliance and hazardous facility orders have proven to be the most beneficial in improving our liquid and gas enforcement programs. Let me give you several examples of how these remedies have been used.

In February, 1981, the Department of Transportation secured a Temporary Restraining Order to stop unauthorized drilling activity in Bienville Parish, Louisiana which threatened the safety and integrity of a large and significant underground natural gas storage facility. This injunctive action was based upon the new criminal provision under the gas pipeline law, which prohibits willful attempts to damage interstate gas transmission facilities.

The new compliance order authority, used to direct compliance with law or regulation, has been exercised extensively by DOT in those situations where the assessment of monetary sanctions would be less effective in ultimately achieving compliance. Since January, 1980, compliance orders have been issued to over 30 natural gas pipeline operators and 2 liquid pipeline operators. In the case of one of these liquid pipelines, the operator elected to discontinue its use of the pipeline due to the extensive physical deterioration of the line. That line will not be permitted to reopen until it meets the minimum Federal safety requirements for liquid pipeline transportation.

The new hazardous facility order authority is used to require any necessary corrective action on either a gas or liquid pipeline which is determined to be hazardous to life or property. This authority has been exercised sparingly, but effectively.

In the last 15 months, 3 hazardous facility actions have been concluded by MTB. In one instance a mobile home park operator was ordered to make significant repairs to its mobile home natural gas facilities before full restoration of services following an explosion and fire. Prompt corrective action was taken as a result of DOT's order. Fortunately, no personal injuries were incurred at those facilities.

In another case, a petroleum pipeline operator made significant operational and equipment alterations of its pipeline system to reduce the likelihood of additional failures and leaks on its transmission line. The operator was required to submit a detailed corrective plan satisfactory to DOT as a result of that hazardous facility proceeding.

While these equitable remedies are fast becoming our primary enforcement tools to assure the continued safety pipeline facilities, monetary sanctions continue to be used. Civil penalty cases initiated during Fiscal Year 1980 resulted in the collection of penalties amounting to \$60,000 from pipeline operators found to be in noncompliance with Federal regulations. Thus far in fiscal year 1981, collections are approaching \$10,000.

The activities of MTB's Office of Operations and Enforcement, which includes our five regional offices, go well beyond the enforcement actions just discussed. I will summarize some of the more important actions that have been taken since the beginning of fiscal year 1980.

- Conducted a thorough program evaluation and indepth field inspection of each State agency participating in the Federal gas pipeline safety program.

- Made inspection calls on all major pipeline construction projects.

- Administered the Federal/State gas pipeline safety grant program to 44 State regulatory agencies and distributed \$3.14 million in grant funds.

- Amended the Federal and State gas pipeline operations manuals and certification and agreement forms to be in consonance with changes brought about by the Pipeline Safety Act of 1979.

- Developed and implemented procedures to reduce processing time of compliance cases.

- Conducted five Federal/State regional meetings with State pipeline agencies to improve the cohesiveness of the gas pipeline safety program.

- Developed and implemented a training course concerning the inspection of liquefied natural gas facilities.

- Continued to encourage State agencies to accept complete safety jurisdiction over all intrastate gas facilities.

- Collected qualification statistics concerning the States' inspection personnel.

For the remainder of this fiscal year and for fiscal years 1982 and 1983, many of MTB's enforcement and operation activities will be of a recurring nature. For example, activities relating to evaluating State gas pipeline programs and administering the associated grant program, conducting routine and non-routine inspections and taking necessary follow-up enforcement actions, and continued improvement in the effectiveness of our headquarters and regional enforcement efforts, are all ongoing responsibilities of the Bureau.

Having special importance during the next two years will be our actions to implement the Federal/State cooperative program authorized under § 205 of the Hazardous Liquid Pipeline Safety Act. While these actions will be set out in detail in a Federal Register document soon to be issued, I would like to share our plans in this regard with the Subcommittee.

While the new liquid Act reserves to the Federal Government full and exclusive responsibility for interstate hazardous liquid pipeline facilities, § 205 of the Act provides for State agencies to assume a major role in the regulation of intrastate hazardous liquid pipelines, paralleling the role for State agencies regarding natural gas pipelines under the Natural Gas Pipeline Safety Act of 1968. The § 205 program is to be a cooperative effort, with State agencies able to assume responsibility for enforcement of the safety standards as they apply to intrastate hazardous liquid pipeline facilities in one of two ways, either (1) by the submission to the MTB of an annual certification by a State agency regarding its authority and enforcement activities, or (2) in situations where the State agency does not or cannot submit such certification, through a written agreement with the MTB for the State agency to carry out on behalf of the MTB inspections to determine compliance with the Federal standards.

In the case of an agreement entered into under § 205(b), the substitution of State enforcement for Federal enforcement is not total. Under an agreement, a State agency carries out certain record maintenance, reporting, inspection, and approval functions with respect to intrastate facilities, and is required to notify the MTB of any violation or probable violation of a Federal safety standard which it discovers. Upon receiving such notification, the responsibility for subsequent enforcement action for those intrastate facilities rests with the Secretary.

On the other hand, the substitution of State enforcement for Federal enforcement under § 205(a) certification is nearly complete.

We have found that 15 States currently have some form of State authority to conduct hazardous liquid pipeline safety regulatory programs. In many cases, adjustments in a State's program or the supporting State law will be necessary to qualify it for full § 205(a) certification. In addition to these 15 States, 27 other States have indicated that they do not now have regulatory authority over hazardous liquid pipelines but either (1) expressed interest in participating in a Federal-State program, or (2) intend to seek State laws to assert safety regulatory authority over hazardous liquid pipelines, or (3) are undecided. Ten States have indicated that they do not assert safety jurisdiction over hazardous liquid pipelines, do not plan to seek any such authority and are not interested in any related Federal-State program. Many States have very limited intrastate pipeline mileage within their boundaries and do not see a need to assume the safety regulatory task. Our analysis of the intrastate liquid pipeline activity in the various States suggest that the optimum Federal-State safety program for intrastate pipelines should involve the direct participation of 19 to 32 States.

Nevertheless, we believe that all of the States should be allowed the opportunity to consider the offer presented by the Hazardous Liquid Pipeline Safety Act and, if they find it in their interest, to assume the noted regulatory responsibilities in an orderly fashion.

From our experience with a similar Federal-State cooperative program for intrastate natural gas pipelines, we recognize that a period of at least two years is required for the States to amend or adopt the necessary authorizing statutes. Therefore, it is our intention to withhold the application of Federal regulations to intrastate pipelines for a two year period. This will allow time for States with existing liquid pipeline laws and inspection programs to make necessary adjustments without the threat of Federal preemption. It will also allow those States which do not have programs the time to consider whether they should assume the responsibility or leave it to the Federal Government.

We are encouraging each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico during the next two years to undertake the responsibility for inspection and enforcement of safety standards for the intrastate hazardous liquid pipelines within their boundaries. During this period, we are prepared to assist any interested State in working toward qualifying it for participation under § 205. We are currently working with members of the California Legislature in their efforts to establish such a program. We are particularly pleased with this activity since California is among the States having extensive mileage of intrastate hazardous liquid pipelines.

The pending Federal Register document that I previously referred to has purposes beyond addressing the prospective State programs for intrastate hazardous liquid lines. It will be a comprehensive "reissuance" document that brings our current liquid pipeline safety regulations in 49 CFR Part 195, into conformity with the terminology and program direction embodied in the new Hazardous Liquid Pipeline Safety Act. I will be happy to forward copies of the Federal Register document to this Subcommittee when they become available.

I will now turn to rulemaking activities that MTB has been involved in since passage of the 1979 legislation, and also discuss our rulemaking plans for the next two years.

As this Subcommittee is aware, the 1979 amendments to the Natural Gas Pipeline Safety Act required DOT to issue final standards during 1980 on the siting, design, construction, operation and maintenance of LNG facilities. A highlight of administrative actions taken to meet that timetable include the following:

*Date and action*

April 21, 1977—ANPRM on siting, design, construction, operation, and maintenance.

February 8, 1979—NPRM on siting design, and construction.

June 12-15, 1979—Technical Pipeline Safety Standards Committee meeting to review NPRM on siting, design, and construction.

February 11, 1980—Final rule on siting, design, and construction (effective March 15, 1980) and NPRM on operation and maintenance.

June 17-20, 1980—Technical Pipeline Safety Standards Committee meeting to review NPRM on operation and maintenance.

August 28, 1980—Amendment to final siting, design, and construction rule issued in response to petitions for reconsideration by industry. Notable changes: (a) revision of criteria for highly seismic area to be within state-of-art design (30-inch allowable displacement) and use of site specific data in predicting movement, and (b) revocation of the exclusionary rule (1 mile from a 60 inch fault) to permit siting in highly seismic areas with DOT approval.

October 23, 1980—Final rules on operation and maintenance, including security and fire protection for nonwaterfront facilities. Effective July 23, 1981, and January 1, 1982, in the case of rules where purchases of equipment are needed for compliance.

As a necessary adjunct to finalizing these new LNG standards, we have, through our Transportation Safety Institute in Oklahoma City, Oklahoma, developed a 1-week course to familiarize Federal and State personnel with the properties of LNG and LNG facilities. The course presents the requirements of the new standards and provides documents to assist the State and Federal personnel in inspections of LNG facilities.

To date, the course has been presented three times with a total of 44 State and 13 Federal personnel having been in attendance. One more presentation of the course will be made in this Fiscal Year.

In the future, the number of times the course will be offered in a given fiscal year will be based on the demonstrated demand of the respective State agencies.

In order to determine the status of LNG facilities with respect to our new standards, we set a goal for Fiscal Year 1980 to inspect the 14 LNG facilities for which it has primary inspection responsibility and the 3 interstate LNG facilities for which States are acting as our agent. Due to other priority events which occurred during the year, we were only able to carry out inspections on 12 of those 17 facilities. Inspection of the remaining 5 facilities will be completed during this Fiscal Year.

Our Fiscal Year 1981 plan for performing safety inspections of the LNG facilities for which we have primary inspection responsibility calls for annual inspections of import/receiving terminals and any other LNG facility that is the subject of controversy, inspections of peak shaving facilities in nonrural areas every two years, and every three years for peak shaving facilities in rural areas. To date, we have conducted safety inspections of 4 LNG facilities during this Fiscal Year.

The inspection schedule just described is expected to remain in effect for the foreseeable future.

In addition to the routine inspections of LNG facilities, MTB has been involved, although infrequently, in conditioning inspections or taking other follow-up actions in response to LNG facility incidents.

Inspection policies regarding LNG facilities under State jurisdiction are developed by each individual State. However, MTB has issued guidelines to all States participating in the pipeline safety program on how to conduct an inspection and enforcement program. Our inspectors monitor the State agencies overall performance against these guidelines.

The 1979 amendments to the gas pipeline law also called for us to issue a rule requiring gas pipeline operators to participate in public safety programs having the purpose of reducing outside force damage to their facilities.

Outside forces, particularly from excavation and other underground construction remains one of the principal causes of significant failure incidents of buried pipeline. Although several States and local jurisdictions have enacted laws to help prevent such incidents, there are still many areas that do not have legislation

designed to reduce the number of incidents caused by outside forces. Congress believed, and was supported by DOT in the belief, that a new regulatory approach for solving this safety problem was necessary. To meet this need, and in accord with the mandate of the 1979 legislation, MTB in late 1979 proposed regulations requiring certain gas pipeline operators to establish or participate in outside force damage prevention programs that meet minimum performance criteria. We expect to issue a final rule on this subject next month.

Rather than talk at length on the more than 40 additional pipeline rulemaking actions that MTB has completed since October, 1979, or has underway or planning at this time, I have attached two lists to my testimony, which I request be made a part of the record, that gives the description and the status or schedule or all additional rulemakings.

Any delays that we have experienced in our rulemaking actions generally can be attributed to key personnel departures from our regulations development office and our inability to quickly fill those open positions. While we continue to actively recruit to fill staff needs, we do face competition with the oil and gas industry in the hiring of highly qualified engineers, especially during this time of peak activity in private industry.

A very important and necessary aspect of our current pipeline safety rulemaking activities is in accordance with the Administration's desire to assure the cost effectiveness of Federal regulations. Several pending and existing pipeline regulations are being reviewed to reaffirm that the public safety benefits resulting from compliance with those regulations justify the costs associated with compliance.

Several other activities, beyond those already discussed, were required to be undertaken by DOT under provisions of the 1979 legislation. In January of this year, in accordance with the new liquid law, an advisory committee, entitled the Hazardous Liquid Pipeline Safety Standards Advisory Committee was established. The Committee's function is to review and report on the technical feasibility, reasonableness, and practicability of hazardous liquid pipeline standards proposed to be issued by DOT. The Committee's reports, advice, and recommendations are considered before finalizing any proposed rule. Like its counterpart under the Natural Gas Pipeline Safety Act of 1968, Committee membership is comprised of five persons from government agencies, including two State Commissioners, four representatives from the hazardous liquid pipeline industry, and six representatives from the general public. Members were appointed by the Secretary after consultation with public and private agencies, including the national organization of State commissions, industry organizations, and public interest groups. Each member is qualified by experience, knowledge, or training relevant to pipeline safety. A balance is achieved by region of the country, public interest, and minority representation.

The Pipeline Safety Act of 1979 also required the Department to study and report to Congress on: Financial responsibility for certain LNG and LPG activities; cost-benefit analysis of increased pipeline safety regulation; and how, when, and to what extent the Department intends to implement its safety jurisdiction over the distribution of gas in connection with the rental or lease or real property. The status of those studies is as follows:

The study on financial responsibility for certain LNG and LPG activities was performed in-house by MTB analysts. Review within the Administration is complete and has been submitted to the Office of Management and Budget (OMB) for review and approval.

The cost-benefit analysis of increased pipeline safety regulation was also performed in-house. The study was submitted to Congress on April 6th of this year.

The third report is also being prepared in-house. Preliminary drafts are being written and a final draft is expected to be submitted for Departmental coordination by May 15, 1981. Allowing two weeks for that coordination and four weeks for OMB review and approval, MTB expects the study to be submitted to Congress in late June or early July.

Lastly, I would like to comment on several technical amendments to the gas pipeline and liquid pipeline safety laws that your Subcommittee is considering.

The technical amendments related to meeting schedules of DOT's gas and liquid pipeline advisory committees, judicial review rights under both the gas and liquid laws, and a drafting error in the Pipeline Safety Act of 1979 affecting State enforcement procedures under the gas law.

With regard to meeting schedules of advisory committees, you are considering an amendment that would delete the requirement for meeting with these committees once every six months and replacing it with a more flexible requirement to meet twice each year, or, in the alternative, to leave the schedule totally to Secretarial discretion.

DOT's experience in 1980 under the "once every six months" meeting schedule would appear to justify a more flexible schedule.

Because of the currently mandated schedule, DOT was obligated to hold three meetings of the gas advisory committee during 1980. The first meeting was held on April 15-17 in Washington, D.C., and had as an agenda the review of five proposed rulemakings that had been issued between February and December, 1979.

Although six months has not passed since the first meeting, the second meeting of the committee was held on June 17-20 due to a statutory obligation to issue final rules for the operation and maintenance of LNG facilities in August 1980.

The third and last meeting of 1980, was held in Washington, D.C. on December 9th and 10th. Were it not for the § 4(b) requirement of the Act to meet with the committee once every six months, this third meeting would not have been scheduled by DOT. This is so given the insufficient amount of business to warrant bringing committee members together and to justify the expenditure of Federal funds. In lieu of the third 1980 meeting of the committee, DOT would have preferred, for reasons of economy and effective use of the committee members' time and expertise, to join the issues addressed in that meeting with the issues planned for the first meeting scheduled for 1981.

Given this experience, I see benefits from the amendment this Subcommittee is considering to provide greater flexibility to DOT in scheduling meetings of its gas and liquid pipeline advisory committees. These benefits would appear to be the avoidance of unnecessary expenditure of DOT resources and a more effective use of the advisory committee members' time and expertise.

The technical amendment to the judicial review provisions of the gas and liquid pipeline safety laws that your Subcommittee is considering would extend the time a party aggrieved by a DOT rulemaking action has for seeking judicial review of the action to a time after conclusion of administrative appeal procedures. Support for such an amendment appears to be the current overlap between the deadline for filing judicial review petitions and the conclusion of DOT administrative appeals.

The current gas and liquid laws provide that aggrieved parties may seek judicial review of a regulation or order prior to the 60th day after the regulation or order is issued. However, DOT's regulations provide aggrieved parties the opportunity to petition DOT for administrative reconsideration of regulations within 30 days after the regulation issued and further provide that the DOT will respond to such petitions within 90 days of being filed. DOT has experienced how this overlap can place an unwarranted burden on both the aggrieved party and the Federal Government. What can be expected is that time and resources will be allocated to judicial filings and that such filings will be subsequently withdrawn upon receiving favorable administrative action from DOT in response to the aggrieved party's administrative appeal.

The last technical amendment that your Subcommittee is considering would correct an apparent drafting error in the Pipeline Safety Act of 1979 that affects State gas pipeline safety programs. It has been contended that in § 5(a) of the Natural Gas Pipeline Safety Act, the parenthetical citation to "subsection (a)(3)" is a result of drafting error and that correcting the citation to read "subsection (a)(2)" is clearly supported by the legislative history that underlies the Pipeline Safety Act of 1979.

I have reviewed the legislative history, and agree with the need to correct the cited error.

In summary Mr. Chairman, I have no reason to object to the perfecting technical amendments that your Subcommittee is considering. Further, I commend your Subcommittee for its continuing efforts to improve the pipeline safety laws. Mr. Chairman, this concludes my prepared statement. I would be pleased to answer any questions you or other members of the Subcommittee may have.

#### ATTACHMENT I

##### I. Regulatory activities for gas pipeline since October 1, 1979:

Title	Status	Description
<b>A. Scheduled rulemaking:</b>		
1. New Standards for LNG Facilities (OPSO-46).	Complete.....	Final rules for siting, design, and construction were published February 11, 1980. Final rules for operation and maintenance were published October 23, 1980.

Title	Status	Description
2. Placing Longitudinal Weld Seams in Upper Half of Pipe (PS-66).	Pending .....	ANPRM based on NTSB recommendation to reduce corrosion potential in seams was published March 27, 1980. Comments and TPSSC views generally oppose. Decision to withdraw or proceed to NPRM due June 1981.
3. Heat Treatment of Hard Spots (PS-58).	.....do.....	NPRM published September 13, 1979, proposing to allow higher temperatures of pipe in removing hard spots by tempering. These spots, which occur by rapid cooling from water during pipe manufacture, can be a source of hydrogen-stress cracking in buried, high stress lines. Final rule originally scheduled for October 1980, postponed due to personnel changes until April 1981.
4. Qualifying Components for Use in Gas Pipelines (PS-64).	.....do.....	NPRM published March 1980, proposing to permit use of components made to old editions of currently referenced standards. Final rule due April 1981.
5. Monitoring Gas Odor Level (PS-57).	.....do.....	NPRM published February 22, 1979, to propose a frequency and location for checking odor in gas. Final rule originally scheduled for October 1980, postponed until April 1981 due to personnel changes.
6. Leak Survey (PS-62).....	.....do.....	NPRM published December 13, 1979, to propose more frequent surveys in high risk areas. Final rule scheduled for May 1981.
7. Interior Piping (PS-67).....	.....do.....	ANPRM published April 3, 1980, questioning the need to regulate interior pipe. NPRM due July 1981.
8. Blasting Procedures.....	.....do.....	On the basis of an NTSB recommendation, an NPRM is scheduled for July 1981 to propose protective action in the event of blasting near pipelines. Since the Excavation Damage final rule (item 12) deals with blasting, the need for this NPRM is being reassessed.
9. Location of Pipelines (PS-61).....	.....do.....	ANPRM published November 29, 1979, questioned the need for operator maintained maps and records to accurately show the location, size, and operating pressure of pipelines. NPRM due June 1981.
10. Hot Taps (PS-60).....	.....do.....	NPRM published November 29, 1979, would require identification of pipe by pressure monitoring before connecting two pressurized pipelines. Final rule due April 1981.
11. Excavation Damage (PS-59).....	.....do.....	NPRM published November 15, 1979, proposing that operators have or participate in a program to prevent outside force damage. Final rule scheduled April 1981. Required by PL 96-129 by November 1980.
12. Reporting Abnormal Operations at LNG Facilities.	.....do.....	ANPRM scheduled for April 1981, to seek advice on type of reports appropriate for LNG incidents. TPSSC has had input and Judah has Anuskiewicz draft.
13. Matter Incorporated by Reference (PS-65).	Complete.....	Final rules were published February 2, 1981, to update the references to documents prepared by industry.
14. Cathodically Protected Transmission Lines (PS-52).	.....do.....	Final rule (Amendment 192-35) was published December 20, 1979, to allow cathodic protection on short sections of transmission lines to be tested on a sampling basis like mains have been.
<b>B. Reviews:</b>		
1. Subparts E, Welding; M, Maintenance, & I, Corrosion.	.....do.....	TPSSC reviews of these subparts resulted in several recommendations for change. Rulemakings not yet scheduled.
2. Master Meter and LP-Gas Systems.	Pending .....	An ad hoc committee review shows that existing regulations are inappropriate for these systems and there are enforcement difficulties. Sec. 111 of Pipeline Safety Act requires a decision on future action by May 31, 1981.
3. Weld Repair Requirements—§ 192.465(a).	.....do.....	This regulation is being reviewed to examine the associated costs and benefits.
4. Corrosion Control Monitoring Requirements—§ 192.465(a).	.....do.....	This regulation is being reviewed to examine associated costs and benefits.
5. Requirements for Reporting Gas Incidents (OPS-49).	.....do.....	The current reporting requirements are being reviewed to examine the associated costs and benefits.
6. Line Markers at Navigable Waterway.	.....do.....	Current rules are being reviewed to examine associated costs and benefits.

## II. Regulatory activities for hazardous liquid pipelines since October 1, 1979:

Title	Status	Description
<b>A. Scheduled rulemaking:</b>		
1. Valve Spacing on Highly Volatile Liquid Pipelines (PS-53).	Complete.....	On January 8, 1981, MTB withdrew a proposed rulemaking begun in September 1978 on installation of block valves at close intervals to limit spill sizes in accidents. Studies showed because of early ignition the valves would not have the desired effect of limiting damages from spills.
2. Testing Highly Volatile Liquid Pipelines (PS-55).	.....do.....	Final rules (Amendment 195-17) were published September 8, 1980, to require that all HVL pipelines not previously tested under Part 195 be tested to 1.25 times maximum operation pressure. To relieve costs, the rule is not fully effective until September 15, 1985, but 50 percent of testing must be done by September 15, 1983. Total cost: \$6.5 million.
3. Seams on Adjacent Pipe Lengths (OPSO-48).	.....do.....	A final rule (Amendment 195-19) was published September 8, 1980, revoking the requirement that weld seams on adjacent pipe lengths be offset. New welding and pipe manufacturing technology concerning material ductility have essentially removed the potential for seam failure and propagation.
4. Highly Volatile Liquids (PS-56) .....	Pending .....	An ANPRM was published February 5, 1979, to seek advice on four suggested ways to reduce accidents on HVL pipelines: (1) tougher weld seams, (2) adding water to ammonia, (3) class location concept for stress levels, (4) recurring hydrostatic pressure tests. Except for (3), further review of comments needed.
5. Hydrostatic Testing (PS-63) .....	Complete.....	Amendment 195-18, published September 8, 1980, reduced the time for pressure testing from 24 to 8 hours, and in some cases, 4 hours. This rule change is supported by new technological studies, and could result in \$12 million a year savings.
6. Qualification of Metallic Components (PS-64).	Pending .....	See item A. above under gas pipelines.
7. Incorporation by Reference (PS-65).	Complete.....	See item A. above under gas pipelines.
8. Placing Longitudinal Weld Seams in Upper Half of Pipe.	Pending .....	See item A. Above under gas pipelines.
9. Reissuance.....	.....do.....	Part 195 is to be amended to comport with new HPLS Act of 1979 and to limit scope of commodity jurisdiction.
<b>B. Reviews:</b>		
1. Hydrostatic Testing.....	.....do.....	Subpart E is to be reviewed in light of safety needs and new practices.
2. Weld Repair Requirements § 195.232.	.....do.....	This regulation is being reviewed to examine associated costs and benefits.
3. Retention of Radiographic Film—§ 195.234(g).	.....do.....	This regulation is being reviewed to examine associated costs and benefits.
4. Addition of Water to Ammonia Pipelines (PS-56A).	.....do.....	This proposed rule is being reviewed to examine associated costs and benefits.

### ATTACHMENT II

#### Planned Pipeline Safety Regulatory Activities for the Remainder of fiscal year 1981 and for fiscal years 1982 and 1983:

	1981	1982	1983
<b>I. Gas and Liquid:</b>			
1. Complete the review projects identified in answer to No. 17 .....	X		
2. Conduct additional reviews of existing regulations considered costly, controversial, unnecessary, or difficult to enforce .....	X	X	X



	1981	1982	1983
3. Conduct rulemaking deemed necessary as a result of reviews of existing regulations.....	X	X	X
4. Complete rulemakings listed as pending under No. 17 .....	X	X	
5. Review sufficiency of regulations for arctic and offshore environments .....			X
6. Update references to industry standards .....		X	
<b>II. Gas:</b>			
1. Propose performance standards as a substitute for references to industry codes for the design of steel pipe .....		X	
2. Propose standards for content of operations and maintenance plans .....		X	
3. Study the need for additional requirements on overpressure protection .....			X
<b>III. Hazardous Liquids:</b>			
1. Determine what liquids other than petroleum, petroleum products, and anhydrous ammonia should be subject to Part 195 .....			X
2. Expand Part 195 jurisdiction to include intrastate pipelines.....			X
3. Study need for regulations on safety of HVL storage facilities; i.e., base load LPG and LPG peak shaving for gas systems.....			X
4. Assess the reporting requirements for liquid incidents from data needs standpoint.....		X	

Senator DANFORTH. The next witness is Mr. Paul Rodgers, administrative director and general counsel, National Association of Regulatory Utility Commissioners.

**STATEMENT OF PAUL RODGERS, ADMINISTRATIVE DIRECTOR AND GENERAL COUNSEL, NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS, ACCOMPANIED BY CHARLES GRAY, ASSISTANT GENERAL COUNSEL**

Mr. RODGERS. Thank you, Mr. Chairman.

Senator DANFORTH. Mr. Rodgers, if you could limit your summary of your testimony to no more than 10 minutes, the committee would appreciate it. Your full testimony, of course, will be included in the record in full.

Mr. RODGERS. Thank you, Mr. Chairman. My name is Paul Rodgers. I'm the administrative director and general counsel of the National Association of Regulatory Utility Commissioners, composed of the commissions of the 50 States engaged in the regulation of utilities and carriers.

I'm accompanied by Charles Gray, our assistant general counsel.

First, I would like to address the reauthorization of the Natural Gas Pipeline Safety Act. As our association indicated in a letter written April 14 to Chairman Packwood and members of the committee, under this act a State agency may participate in monitoring and enforcing natural gas pipeline safety standards. The Federal Government is authorized to grant up to 50 percent of the costs to the States for conducting such programs. H.R. 2961, a bill authorizing appropriations for the natural gas pipeline safety programs for fiscal year 1982 and fiscal year 1983, proposes that a total of \$3.618 million for Federal grants-in-aid to the State safety programs for fiscal year 1982.

Members of the NARUC believe this level of funding will be so inadequate that the operation and enforcement of State safety programs will be jeopardized. In 1980, 49 States, the District of Columbia, and Puerto Rico were involved in monitoring and enforcing natural gas pipeline safety standards under the act: 46 agencies by certification and 4 by agreement.

Furthermore the Materials Transportation Bureau of the DOT has received additional requests from two States not involved in

the 1980 program. Texas has requested funds for 1981, and New Mexico, which filed its request too late to be included in the 1981 program, will participate in 1982.

For 1981, participating agencies have requested a total of \$4,570,000 from the MTB. However, the MTB has only a little over \$3 million available for allocation to the States for the natural gas pipeline safety program. In other words, the MTB would need approximately \$1.5 million to fulfill these requests from the States for fiscal year 1981. This year will be the first in which the MTB has not been able to match the full 50 percent of the costs to the States for the safety program.

With inevitable inflation in the coming year and continuing cuts in budgets, State agencies will be without the resources to operate and enforce safety programs as effectively as they should. Given the shortage of funds in 1981, it is doubtful that existing programs can continue to function at the necessary level and there will certainly not be enough funds for initiating new programs or furthering efforts by the States to expand or otherwise improve their existing programs, as the MTB has encouraged.

The proposed amount of \$3.618 million for Federal grants-in-aid to the States for fiscal year 1982 will simply not be sufficient to help these State programs which are already struggling for funds. In the past, the Federal Government has been able to save billions of dollars by sharing with the States the cost of regulating and enforcing the natural gas pipeline safety program. Moreover, compliance has brought far more effective administration of programs and increased safety.

If a state agency does not assume responsibility for gas facilities within its borders, the Federal Government retains responsibility and must bear 100 percent of the costs for enforcement. For this reason, Federal funds expended for State's grants-in-aid are a very good investment. Moreover, this concept, which has been in existence for quite some time, fully supports the administration's emphasis on returning authority and responsibility to the States.

In support of this Federal-State regulatory partnership, the NARUC also wishes to urge at this time that MTB encourage States to act as interstate agents for the Federal Government. At our 1982 annual convention held in November last year in Houston, we passed a resolution opposing any future efforts by the MTB to curtail surveillance and compliance duties of state regulatory authorities which are authorized agents of DOT. Originally, the Natural Gas Pipeline Safety Act encouraged States to participate and enforce safety standards. However, during the last administration, DOT reversed its policy of encouraging the use of qualified State personnel to aid in the monitoring and enforcement of Federal interstate pipeline standards adopted under the act.

Because of DOT's active discouragement, 15 States have thus far withdrawn from the interstate program, as reported in the NARUC convention resolution. DOT has contended that Congress did not intend the State agency relationship to be permanent but only a temporary arrangement until the Federal field staff increased to full strength. However, DOT has not produced any support for this position in the legislative history. On the contrary, Congress amended the act in 1972 specifically to authorize 50-50 matching

grants for State monitoring of Federal interstate pipeline safety standards.

I would now like to turn to the reauthorization of the Hazardous Liquid Pipeline Safety Act. In the appropriations proposed, no funds are set aside for Federal grants-in-aid to State safety programs. The reason for this omission is that the program is not fully underway. We wish to note that a letter dated May 9, 1980, which was sent to the Secretary of Transportation at that time, records the nomination of two State Commissioners to serve on a technical committee. We urge that prompt action be taken so this committee may begin consideration of pipeline safety standards.

Finally, I would like to comment on S. 960. The NARUC supports enactment of S. 960 in that the concept is based on such time-tested Federal-State partnerships as those in the Natural Gas Pipeline Safety Act of 1968 and Federal Railroad Safety Act of 1970. Similar legislation was recommended by the NARUC Executive Committee, meeting on February 27 of this year. In order to further strengthen the opportunities for Federal, State, and industry cooperation under S. 960, we respectfully recommend that it be amended to include an advisory committee similar to the Technical Pipeline Safety Standards Committee under the Natural Gas Pipeline Safety Act and the Technical Hazardous-Liquid Pipeline Safety Committee under the Hazardous Liquid Pipeline Safety Act of 1979.

Mr. Chairman, as we have emphasized throughout this testimony, providing adequate financial assistance to the States for their natural gas pipeline safety programs, on a 50-50 matching basis, will insure continued State participation and also permit the Federal Government to carry out its national safety programs for far less than what it would otherwise cost. Encouraging States to monitor interstate as well as intrastate pipelines will help establish more economical and efficient regulations.

I think it is unfortunate that DOT is now trying to drive out qualified State participation in the safety enforcement of interstate pipelines, in order to build its own field staff at substantial expense. Our members are confident this modest Federal investment in State safety programs will continue to return to the American people incalculable savings in lives and limbs not loss.

We further urge that the safety standards for the Hazardous Liquid Pipeline program be speedily but thoroughly considered and delineated. NARUC also supports the enactment of the Federal-State partnership concept found in S. 960, a bill to amend the Hazardous Materials Transportation Act.

Thank you.

Senator DANFORTH. Thank you. Senator Gorton?

Senator GORTON. No questions.

Senator DANFORTH. Senator Schmitt?

Senator SCHMITT. No, I'm just getting started. Thank you very much.

[The statement follows:]

STATEMENT OF THE NATIONAL ASSOCIATION OF REGULATORY UTILITY  
COMMISSIONERS

Mr. Chairman and Members of the Committee: My name is Paul Rodgers. I am Administrative Director and General Counsel for the National Association of Regu-

latory Utility Commissioners, commonly known as the "NARUC." Accompanying me today are Charles Gray, NARUC Assistant General Counsel, and Rose Ann C. Fraistat, NARUC Director of Congressional Relations.

The NARUC is a quasi-governmental nonprofit organization founded in 1889. Within our membership are the governmental agencies of the fifty States and the District of Columbia, Puerto Rico, Guam, and the Virgin Islands engaged in the regulation of utilities and carriers. Our chief objective is to serve the public interest by seeking to improve the quality and effectiveness of government regulation.

The members of the NARUC appreciate your invitation to make known their views on the reauthorizations of the Hazardous Materials Transportation Act, the Natural Gas Pipeline Safety Act, and the Hazardous Liquid Pipeline Safety Act, and to comment on S. 960, the Hazardous Transportation Act Amendments of 1981.

#### NATURAL GAS PIPELINE SAFETY

I would first like to address the reauthorization of the Natural Gas Pipeline Safety Act. As the NARUC indicated in a letter dated April 14, 1981, sent to Chairman Packwood and the members of the Senate Committee on Commerce, Science, and Transportation, our Association has repeatedly pointed to the Natural Gas Pipeline Safety Act, and the program established by its authority, as a model for Federal-State cooperation. The State commissions are included in the planning stages of the program; they are consulted regularly; and their opinions and recommendations are heard and acted upon.

Under this Act, a State agency, which has been certified by the Department of Transportation (DOT), may participate in monitoring and enforcing natural gas pipeline safety standards. If the agency enters into a less extensive agreement with DOT, the agency may monitor the gas pipeline operations but has no actual enforcement authority. The Federal government is authorized to grant up to 50 percent of the costs to the States for conducting such programs [49 U.S.C., Sec. 1674(d)(1)].

H.R. 2961, a bill authorizing appropriation for the natural gas pipeline safety programs for fiscal years 1982 and 1983, proposes a total of \$3.618 million for Federal grants-in-aid to the State safety programs for fiscal year 1982. The members of the NARUC believe that this level of funding will be so inadequate that the operation and enforcement of the State safety programs will be jeopardized.

In 1980, forty-nine States, the District of Columbia, and Puerto Rico were involved in monitoring and enforcing natural gas pipeline safety standards under the act: 48 agencies by certification and 4 by agreement.<sup>1</sup> (Delaware, Massachusetts, Nebraska, and New Jersey participated by agreement.) The Materials Transportation Bureau of DOT has received additional requests from two States which were not involved in the 1980 program: Texas has requested funds for 1981, and New Mexico, which filed its request too late to be included in the 1981 program, will be participating in 1982.

For fiscal year 1981, the participating State agencies have requested a total of \$4,570,302 from the Materials Transportation Bureau (MTB). However, the MTB has only \$3,082,000 available for allocation to the States for their natural gas pipeline safety programs.

In other words, the MTB would need approximately \$1.5 million to fulfill these requests from the States for fiscal year 1981. This year will be the first in which the MTB has not been able to match the full 50 percent of the costs to the States for the gas pipeline safety programs. With the inevitable inflation of the coming year and the continuing cuts in State revenues and budgets, the State agencies will be without the resources to operate and enforce their safety programs effectively.

Given the shortage of funds for fiscal year 1981, it is doubtful that existing programs can continue functioning at necessary levels and there will certainly not be enough funds for initiating new programs or furthering efforts by the States to expand or otherwise improve their existing programs, as the MTB has encouraged. The proposed amount of \$3.618 million for Federal grants-in-aid to the States for fiscal year 1982 will simply not be sufficient help to State programs already stricken in funds.

In the past, the Federal government has been able to save millions of dollars by sharing with the States the costs of regulating and enforcing the natural gas pipeline safety program. Moreover, sharing the responsibility of regulation and compliance has made for more effective administration of the programs and for increased safety.

If a State agency does not assume safety responsibility for gas facilities within its borders, the Federal government retains the responsibility and must bear 100 per-

<sup>1</sup>Two agencies have been certified in Florida—the Public Service Commission and the Fire Marshal. South Dakota withdrew from the program in June 1980.

cent of the costs for enforcement. For this reason, Federal funds expended for State grants-in-aid are a very good investment.

Furthermore, the Federal-State partnership established by this program is consistent with the new Administration's emphasis on returning to the States those responsibilities which can be more knowledgeably and more efficiently handled by those closer to the particular needs of their constituents.

In support of this Federal-State regulatory partnership, the NARUC also wished to urge at this time that the Materials Transportation Bureau of the Department of Transportation encourage States to act as interstate agents for the Federal government. At its 92nd Annual Convention, held in November 1980 in Houston, Texas, the NARUC passed a resolution opposing any future efforts by the MTB to curtail the surveillance and compliance duties of State regulatory authorities which are authorized as agents of DOT and actively participating in the regulation and enforcement of interstate pipeline safety standards. (A copy of NARUC Convention Resolution No. 8 is attached.)

Originally, the Natural Gas Pipeline Safety Act of 1968 encouraged State participation in enforcing interstate pipeline safety standards. However, during the Administration of President Jimmy Carter, DOT reversed its policy of encouraging the use of qualified State personnel to aid in the monitoring and enforcement of Federal interstate pipeline safety standards adopted under the Act. Because of DOT's active discouragement, 15 States have thus far withdrawn from the interstate program, as reported in the NARUC Convention Resolution.

DOT and its Materials Transportation Bureau have contended that Congress did not intend for the State agency relationship to be permanent but only a temporary arrangement until the Federal field staff was increased to full strength. However, DOT has not precluded any support for the positions in the legislative history. On the contrary, Congress amended the Act in 1972 specifically to authorize the 50-50 matching grants for State monitoring of Federal interstate pipeline safety standards.

#### HAZARDOUS LIQUID PIPELINE SAFETY

I would like to turn now to the reauthorization of the Hazardous Liquid Pipeline Safety Act of 1979. In the appropriations proposed in H.R. 2961, no funds are set aside for Federal grants-in-aid to the States for safety programs. The unfortunate reason for this omission is that the program is still not fully underway.

The NARUC wishes to note that a letter dated May 9, 1980, which was sent to the Secretary of Transportation at that time, records the nominations of two State commissioners to serve on the Technical Hazardous-Liquid Pipeline Safety Standards Committee. (A copy of this letter is attached.) We would respectfully urge that prompt action be taken to confirm the membership of this committee so that it may begin the necessary consideration of hazardous liquid pipeline safety standards.

#### HAZARDOUS MATERIALS TRANSPORTATION ACT AMENDMENTS OF 1981

Finally, I would like to comment on S. 960 (a bill to amend the Hazardous Materials Transportation Act to encourage a greater effort in the prevention and response to transportation incidents involving hazardous materials, to provide assistance to State and local governments in preventing and responding to such incidents, and for other purposes).

The NARUC supports the enactment of S. 960, whose concept is based on the very successful and time-tested Federal-State partnerships under the Natural Gas Pipeline Safety Act of 1968 and the Federal Railroad Safety Act of 1970. Similar legislation was unanimously recommended by the NARUC Executive Committee at its Winter Meeting in Washington, D.C. on February 27, 1981. (A copy of the NARUC proposed bill, rationale, and section-by-section analysis is attached.)

In order to further strengthen the opportunities for Federal-State-industry cooperation under S. 960, we respectfully recommend that it be amended to include an advisory committee composed of Federal, State, carrier and shipper representatives, similar to the Technical Pipeline Safety Standards Committee under the Natural Gas Pipeline Safety Act of 1968 (49 U.S.C., Sec. 1673), and the Technical Hazardous-Liquid Pipeline Safety Standards Committee under the Hazardous Liquid Pipeline Safety Act of 1979 [49 U.S.C., Sec. 2003(a)(1)].

In a recent survey conducted by the NARUC, 21 of 30 responding State agencies supported a Hazardous Materials (HM) program similar to the Rail Safety and Natural Gas Pipeline Safety Acts which allow the States through certification or agreement procedures to monitor and enforce Federal regulations. Also, as with the other safety programs, the Federal government would share the costs of the programs with participating States.

This 50-50 arrangement would enable the Federal government to support increased State participation in HM regulation at half the cost of equivalent Federal regulation. Furthermore, such amendments to the Hazardous Materials Transportation Act would be consistent with the prevailing national policy of returning jurisdiction over local concerns to State and local officials.

The rationale to the NARUC proposed bill observes that the majority of HM shipments—which totaled more than 4 billion tons in 1979—is in interstate commerce and, therefore, properly under the regulatory jurisdiction of the Congress and Federal agencies. Nonetheless, the impact of incidents and accidents involving such hazardous materials transportation is clearly of State and local concern.

Specifically, the proposed NARUC amendments would add a new Section 1813 (49 U.S.C.) to permit the States to participate in HM regulation, and a new Section 1814, to define certain enforcement powers granted to the States. Proposed Section 1813(d) would provide 50 percent Federal funding to State agencies participating in HM regulation through certification or agreement.

As in the existing safety programs, a State agency wishing to participate would request the Secretary of Transportation to certify its HM program. To retain this certification, each State agency would file an annual report recording all HM accidents or incidents within the State and detailing State investigative activities, as well as its maintenance, reporting and inspection activities, and other information the Secretary deemed necessary.

An agreement procedure, a less formal arrangement, would allow State agencies unwilling or incapable of achieving certification to investigate and enforce HM regulations to the extent authorized by the Secretary. Both certification and an agreement could be terminated, after notice and opportunity for hearing, if the Secretary determines that the State agency has not met its obligations.

#### CONCLUSION

Mr. Chairman, as we have emphasized throughout this testimony, providing adequate financial assistance to the States for their natural gas pipeline safety programs, on a 50-50 matching basis, will not only ensure continued, vitally necessary State participation, but will also permit the Federal government to carry out its national safety programs for far less than it would otherwise cost. Encouraging States to monitor interstate as well as intrastate gas pipelines will help establish more economical and more efficient regulation of these operations.

The members of the NARUC are confident that this rather moderate Federal investment in State safety programs will continue to return to the American people incalculable savings in lives and limbs not lost and property not destroyed by gas pipeline accidents which can be avoided with increased surveillance.

We further urge that the safety standards for the Hazardous Liquid Pipeline Safety program be speedily but thoroughly considered and delineated.

The NARUC also supports the enactment of S. 960 to amend the Hazardous Materials Transportation Act which would establish a Federal-State partnership in monitoring and enforcing such HM transportation.

Thank you for your attention.

**Senator DANFORTH.** The next witness is the Honorable Arnie Wight, New Hampshire House of Representatives, on behalf of the National Conference of State Legislatures.

#### STATEMENT OF HON. ARNIE WIGHT, NEW HAMPSHIRE HOUSE OF REPRESENTATIVES, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES

**Mr. WIGHT.** Good morning, Mr. Chairman. Fellow Senators.

It is a pleasure to be here this morning and share with you some of the thoughts of the National Conference of State Legislatures and also my personal experience in the New Hampshire House of Representatives.

I have been there two terms and am chairman of the Science and Technology Committee that handles energy, I also serve as chairman of the Joint Legislative Committee on radioactive waste management policy and rather uniquely, and also as chairman of the State task force that negotiates for the State of New Hampshire,

the Federal Government or any other government in terms of radioactive waste management.

As a result of this opportunity to be serving in the field of hazardous materials including hazardous chemicals, I also am fortunate enough to have had technical training as a chemical engineer and have worked 30 years in a multinational chemical corporation. So, I do feel fairly comfortable in this area.

It was indeed very satisfying to hear Senator Cannon reporting his concerns with low-level radioactivity, and also the comments of Senator Gorton. We think that the issues relating to hazardous materials transportation are of primary concern to the States and these concerns are enunciated in a policy position which has been adopted by the National Conference of State Legislatures' State/Federal Assembly.

Using that as a framework, we feel there is a general concern by the public over the hazards of transportation of these materials. Potential for very serious accidents involving hazardous materials has led some State and local governments to take actions to prevent or minimize possibilities of such an accident in its jurisdiction.

There is no question that while there is a national need served in transporting hazardous materials, the protection to public health and safety has been historically the role of State and local governments and will continue to be so.

While the Federal Government may preempt State laws, there is growing concern over lack of commitment of Federal manpower resources to assist State and local governments. Most of the States have adopted all or part of 49-CFR.

In a survey of the American Association of State Highway and Transportation officials, 35 out of 40 States responded and believed that it is adequate. However, the problem is a lack of adequate resources to enforce it and the lack of knowledge as to what actually is being transported. This has led to a number of actions which have been deemed inconsistent with Federal regulations.

The National Conference of State Legislatures feels if the Federal Government continues to preempt State efforts at preventing accidents involving transportation of hazardous materials, that there must be an expanded effort on the part of the Federal Government to provide the States with the capability to enforce 49-CFR and to respond to such incidents.

Unless the Federal commitment is adequate to protect the public health and safety, NCSL opposes preemption of State laws and regulations which lessen State abilities to carry out the responsibility.

As an example of the lack of Federal commitment, there is only one Federal inspector in the entire State of New Hampshire. While this particular inspector is well respected and hard working, we recognize that in order to protect the citizens of the State of New Hampshire, the State would have to establish its own hazardous materials program.

This has been done. In 1979 our legislature authorized our State Department of Safety to adopt 49-CFR and our State police were designated as the lead agency. In November of 1980, a special hazardous materials and waste unit was created within the Depart-

ment of Safety. This unit is charged with the training of State police personnel and enforcement of our regulations.

We only have two troopers assigned to this. While the entire State Police force numbers 215, 150 are assigned to patrol duty on a day-to-day basis for enforcement of regulations. As is the case in other States, our personnel and financial resources fall far short of those needed to do a thorough job of training and enforcement.

Working within the confines of our limited resources we did send our staff to the Colorado Training Institute. Upon their return, they developed a 2-day training program tailored to meet the needs of New Hampshire. As a result of their work, in March of this year a New Hampshire inspection and enforcement training program was conducted for all field sergeants.

The course will be provided in May for all corporals and thereafter for all State troopers. We would like to reiterate that this training program was developed without the assistance of Federal funds and was developed due to the lack of adequate Federal personnel assigned to our State.

Essentially, we are strongly in favor of regional training centers, and I believe that I have heard enough information on this morning, that I do not want to repeat that to you. But we certainly believe regional training centers are essential.

In developing a growth management and industrial development policy for our State, we had a fair amount of contact with the Department of Energy, particularly with reference to building energy performance standards. If you are at all familiar with those, that was a very expensive and time-consuming development which, in essence, as a matter of central planning, told each State exactly how it was to handle its affairs.

I was fortunate in being able to come here and talk to the man in charge who immediately responded that absolutely regional differences were so significant that if each State were simply to develop its own standards for the same goals, that indeed that could operate free of Federal constraint. Therefore, to us it's exceedingly important that there be regional training centers so that they can respond to regional differences.

Also, there is a great need for uniformity. These shipments cross State lines and as they do, we are certain that to have good quality assurance, it is important to establish uniform standards.

Now, the Colorado Training Institute in Denver, I think, can be used as a model of Federal, State, and local government and private sector cooperation in training emergency response personnel. We were very satisfied with the training of our people when they got there.

The Colorado Training Institute is funded, in part, by the U.S. Department of Transportation. They provided \$70,000 to run it with \$175,000 coming in the form of direct monetary subsidies, personnel and equipment from industry and State and local governments. On that basis, that program was funded with less than 30-percent Federal funds.

We think that can be viewed as a regional training facility of the type NCSL would like to support. We believe it is only through this concept of regional cooperation that training can be made available



for the thousands of State and local personnel who need this information and the ability to enforcement.

Since we recognize the fact that there are extremely limited resources available, that those resources must be concentrated where they will do the most good, we suggest that the Federal Government seek to identify highway routes which carry the bulk of these materials and focus inspection and enforcement personnel in these areas.

In the area of prenotification, and this is an area in which I feel quite close, I have become very aware of the public's concern with safety. Very recently I visited the seacoast of our State with the Governor, where we were concerned with emergency evacuation plans for Seabrook, which hopefully will be on line in 2 or 3 years. There in the presence of an exceedingly hostile 600 to 800 people, you could sense that it is this lack of information and resulting fear that is motivating these people to a fanaticism which is very difficult to break.

Consequently, one of the things that I feel certain about particularly with items that are hazardous, is a system of prenotification. Our definition of hazardous is slightly different. We are defining it as a substance or material in quantity and form which may pose an unreasonable risk to health and safety. On that basis, I feel strongly that a program of prenotification is truly essential.

Enforcement and correction will take place wherever an incident occurs. That is in the local community with State help. We can't really expect very much practical help on the spot from the Federal Government. So consequently, I think it is essential that we permit and set up as a policy this matter of prenotification, and let the industry and local government and State government work it out with the approval and concurrence of the Federal Government.

Such a system has been developed in Georgia. It seems to be working quite well. The law there requires that all drivers carrying such loads notify an operations center before entering or leaving the State. The driver is required to provide the following information: time and date of arrival; routes to be used; time of planned departure; and the name of the company. The driver is also required to notify the center of any changes of the above information while in the State and must notify the center within 1 hour of leaving.

This system seems to be working well. Eleven other States are doing something similar. I hope that you will be able to take supportive action. I certainly appreciate the opportunity to appear this morning.

Senator DANFORTH. Thank you, sir. Very helpful. Senator Gorton.

Senator GORTON. Do you think it remotely possible or feasible to have a rational nationwide system for the transportation of hazardous wastes without at least some degree of Federal preemption?

Mr. WIGHT. I think it really is determined upon your definition of preemption. The State planning council referred to here recently tried to set up the criteria for the handling of radioactive waste, and has been trying to emphasize getting away from Federal preemption but have close consultation and concurrence. I think one

has to recognize that the ultimate decision, I think, is Federal preemption.

I see the same problem in siting facilities for low-level radioactivity. In New England, New Hampshire has taken the legislative initiative for New England, the nine Northeastern States. I rather believe that the fourth disposal area for low-level radioactivity will be in the Northeastern part.

There we find what I am sure you are all well aware of. This is not in my backyard syndrome. That must be addressed. In the State of Massachusetts, I have been very impressed by their recent legislation in the siting of hazardous waste and legislation being drafted now for the siting of low-level radioactivity waste. It really says we can no longer look at these things emotionally but it will only be upon facts, reasons, and logic that we solve them.

So, I think we have this, I think it's absolutely essential and urgent that we do solve them, and we solve them by recognizing that it shall only be done upon the best possible information and recognition that we all must join hands and work together to solve the problem.

I see more and more in New England and New Hampshire where we consider ourselves extremely independent, and we like to operate completely independent of our neighbor, but we are not isolated.

What we do affects our neighbor. What our neighbor does affects us. In New Hampshire we are coming to recognize that now is the time to think on these things and to solve them cooperatively. It will only be through restoration of harmony that this can be done.

Senator GORTON. There is no question but that you are correct. I think that the fear here is that what we end up doing if there is no form of Federal preemption at all is simply rewarding the least rational responses, and placing the burden on those States which are going to do it, exercise their powers in the most responsible manner.

I think I can agree with you. It's this matter of exactly what preemption means. There has to be a final authority. But I think that as long as this final authority establishes a process whereby the people who are being affected know they have been involved from the beginning, that their input has been there, that local benefits have been negotiated, that their concerns have not been overlooked. This is that which is necessary to develop an environment and attitude in which valid compromise can be reached.

I think it can be done. If it isn't, then I don't think we can afford the system. If it isn't, I think the risk is too great to accept. So it is not easy, but I think dedication and concentration toward such a solution will provide it.

Thank you, Mr. Wight.

Senator DANFORTH. Senator Schmitt.

Senator SCHMITT. Yes, Mr. Wight, we appreciate your testimony very much. Are you familiar with the controversy surrounding the low-level defense waste project in New Mexico, the so-called "Waste Isolation Pilot?"

Mr. WIGHT. Somewhat. Not intimately but I'm reasonably aware of it.

Senator SCHMITT. It's complicated by the fact, although not generally recognized, that it's a defense project. Nevertheless, a couple years ago we were able to get the Armed Services Committees in both Houses of Congress to agree to State participation, in consultation and cooperation.

Mr. WIGHT. That is a better word.

Mr. SCHMITT. And my question was, did you mean concurrence, because that implies a veto?

Mr. WIGHT. Yes; it does and I do not believe in the veto. Cooperation is a better word.

Senator SCHMITT. I'm glad we cleared that up.

Mr. WIGHT. I'm glad you did too.

Senator SCHMITT. What we have been trying to do in New Mexico, then, starts to be a model, even though it is a defense project, for some of these other activities. I would have to say parenthetically that unfortunately the attorney general of New Mexico and the Governor at the last minute declined to sign the consultation and cooperation agreement with the DOE because there was not written into that agreement the already guaranteed right of judicial review. They wanted it written down. DOE, obviously, as a potential litigant, did not want it written in, so we do not have that agreement as of this date.

Do you have any comments on that? Do you see any necessity in the Federal-State cooperation to have written down the right of judicial review, which seems to me exists under any circumstance anyway?

Mr. WIGHT. If it is necessary to gain passage, I would concur. I agree with you. I think the right of judicial review exists. It's my personal belief that in locating the next low-level disposal area in the Northeast, I'm rather convinced that there will be a judicial review before it is established. I think probably that should happen. We ought to clear the decks; carry it all the way through and carry it into the courts. And I believe that the court will sustain the process that has been developed by the State of Massachusetts.

But I think it is important to answer all of the questions and carry it to completion and say, fine, this is the way we're going to go. It is exceedingly important to involve the people. For instance, you may have heard of the Seabrook Nuclear Station. We're now 4 or 5 years behind schedule. It was only last week we introduced a resolution from my committee saying let's get on with the job, let's have no more unnecessary delays. But utilizing all the lessons of Three Mile Island, good evacuation plan and an understanding of how we are going to handle radioactive waste, let's move on and get that job done because we must hold down the cost of future power.

We know that the power coming out of Seabrook will cost  $x$  cents. The next one that could possibly come on line is in Massachusetts and will cost twice as much, and the third one in Connecticut is going to cost three times as much when it comes on. When this information was presented to 400 legislators, it passed 192 to 149. Now that is something we never knew. We never had real hold on public support or legislative support of the completion

of Seabrook until we had the courage to put it on the floor of the House and said, go. So I think you have to move ahead.

Senator SCHMITT. Do you think we have to, though, move ahead separately with issues, transportation or otherwise, involving radioactive materials versus those that are hazardous in general?

And let me, while you're thinking, amplify the reason for asking the question. The public perception of the danger even from low-level radioactive materials is far greater than the public perception of danger from other materials that are far more hazardous.

Mr. WIGHT. I'm glad to hear your observations. They are different from mine. I would like to keep them separate in getting them into position. The reason I would like to get them separate is because in New England, in particular, in New Hampshire, two things may be true. The problem at the moment is hazardous waste which is affecting our water supply. So that happens to be the preeminent problem right now.

The handling of nuclear waste is a little further away, so it isn't quite as difficult.

Everyone who produces this low-level radioactivity or high level is well identified. They are all licensed. The NRC regulations, their standards, and criteria are reasonably satisfactory. I believe the radioactivity area actually is a better definition and can be controlled more precisely than the hazardous waste. There are four generators. It is well studied and understood. Right now I believe it is being handled reasonably well. I certainly think it is very well at Barnwell.

I have been to Barnwell and have talked to representatives from Washington who certainly feel that the situation is improving. So I believe from a technical standpoint that we can demonstrate that we do have the capacity to do it and do it well. I'm not so sure we can do that in hazardous waste. There are too many people involved.

Senator SCHMITT. I agree with you technically. I am talking about public perception. There is a significant minority, and it is a significant minority, that have a great fear of radioactive materials, that will come forward any time you talk about moving radioactive materials, wastes or otherwise, that do not come forward when we move far more hazardous materials on a routine basis. That is what I'm talking about, perception.

It is maybe best illustrated by our concern over the operation of a nuclear powerplant versus a much lower concern over the operation of a coal-fired powerplant where you can demonstrate statistically as well as practically and technically the danger in a coal-fired plant is much higher than the danger in a nuclear plant.

Mr. WIGHT. That was borne out recently with the tragic loss of 15 lives in the coal mine. No mention was made of that in the New Hampshire Legislature but they were sure concerned about the leakage of radioactive waste in Japan.

I think it has to be solved through an extensive program of public information and public education. That isn't going to happen quickly. One of our problems, I think, President Kemeny of Dartmouth expressed it rather well. After he headed up that commission, he then observed that all parties to a discussion are given equal weight, whether technically competent or not. But if the New

York Times were to report that Newton, Galileo, and Archimedes had decided it was time to repeal the law of gravity, that the paper at the same time would say Prof. Joe Smultz from Oshkosh has said, "You know this is absolutely impossible." They are given equal weight. This is one of the problems that you do have.

In this resolution about Seabrook we held 30 hours of hearing before my committee. In the final day a report was put in my hands, and in the bibliography there were five or six references to a man who had testified before my committee, a man whom I personally believe was absolutely incompetent. But he was quoted as an authority, and these things happen.

The other thing Kemeny said is that people expert in their fields become so politically oriented that they lose their sense of objectivity. There is a chap named Doverman in California who fits that situation. He is utterly brilliant but he has become so obsessed with the dangers of radioactivity that his scientific peers no longer can accept what he says.

But there are many people who appear before my committee and say Doverman says this and Doverman says that. So we have that typical situation, whom shall we believe?

It appears to me this is solved really by peer group review.

Senator SCHMITT. Not to prolong this, but all I'm trying to do is get us to recognize that there are different public perceptions.

Mr. WIGHT. Yes.

Senator SCHMITT. About radioactivity.

Mr. WIGHT. Right.

Senator SCHMITT. Versus all other hazardous materials. There really and truly are.

Mr. WIGHT. I agree with that.

Senator SCHMITT. Somebody who claims coal causes cancer doesn't get nearly the play and emotions out of the community of concerned individuals as does somebody who claims that radioactivity causes cancer.

Mr. WIGHT. You're right.

Senator SCHMITT. We know they both have the propensity to cause cancer.

Mr. WIGHT. Right.

Senator SCHMITT. It's just a different perception. We have to deal with that. I am not arguing with that. I think responsible legislators have to deal with perceptions as well as reality.

Mr. WIGHT. Absolutely.

Senator SCHMITT. So legislatively we are almost certainly going to have to deal with it separately. It may come together at some point.

Mr. WIGHT. Certainly. I'm very happy to hear you state it because I now feel more comfortable than when I left home yesterday morning.

Senator SCHMITT. Thank you, Mr. Chairman.

Senator DANFORTH. Mr. Wight, thank you very much. Excellent testimony, and we appreciate your being here.

Mr. WIGHT. Thank you very much.

[The statement follows:]

**STATEMENT OF ARNIE WIGHT, STATE REPRESENTATIVE, NEW HAMPSHIRE HOUSE OF REPRESENTATIVES, ON BEHALF OF THE NATIONAL CONFERENCE OF STATE LEGISLATURES**

Mr. Chairman and members of the Committee, I am Arnie Wight, Representative with the New Hampshire State Legislature, I am here today on behalf of the National Conference of State Legislatures, I would like to thank the members of the Committee for allowing me the opportunity to share our views on issues surrounding the transportation of Hazardous materials, and specifically on S. 960, the Hazardous Materials Transportation Act of 1981.

The National Conference of State Legislatures is the only national organization which serves the nation's 7,500 state legislators. In addition to working to improve the effectiveness of state legislatures and to foster communication and exchange of information among state legislatures, NCSL also provides legislatures with a strong, cohesive voice in the federal decision-making process.

I would like to focus my remarks on those issues relating to hazardous materials transportation which are of primary concern to states. These concerns are enunciated in a policy position which has been adopted by the NCSL State-Federal Assembly, and which we today will use as a framework for the discussion of our concerns.

The transportation of hazardous materials is an essential activity in our technologically complex society, one upon which all sectors of the economy are highly dependent. The number of different types of materials classified as hazardous has grown enormously over the last decade, as has the volume and the number of shipments of these materials by all modes of transportation.

What has also grown over the last ten years is the number of incidents involving the transportation of hazardous materials. Between 1971 and 1979, the number of these incidents increased from 2,255 to 17,524. Of the 17,524 that occurred in 1979, a total of 15,355 involved private carrier using the highway mode. The U.S. Department of Transportation, through its modal agencies, has a total of 222 work-years devoted to enforcing hazardous materials regulations, of which 115 work-years are in the Coast Guard enforcement of maritime shipments of hazardous materials. In the highway mode, where the bulk of the incidents occurred, DOT, through the Federal Highway Administration, has a total of 47 work-years of enforcement capability. Yet, in 1980, according to the GAO report of November 4, 1980, FHWA planned on inspecting 1,716 hazardous materials carriers and 33,514 trucks. It seems highly unlikely that such a massive inspection program can be accomplished with only 47 work-years of enforcement capability.

There is a growing concern among the general public over the hazards that the transportation of these materials may entail. The potential for catastrophic accidents involving hazardous materials has led some state and local governments to take actions to prevent or to minimize the possibility of such an accident in their jurisdictions. For there is no question that, while there is a national need served in transporting hazardous materials, the protection of the public health and safety has been historically the role of the state and local governments, and will continue to be so. And while the federal government may preempt state and local laws concerning hazardous materials transportation, there is growing concern over the lack of an adequate commitment of federal financial and manpower resources to assist the state and local governments in prevention of incidents and in response to incidents when they occur.

The states generally support the federal regulations (49 CFR) concerning hazardous materials transportation. Most of the states have adopted all or part of 49 CFR. In a survey by the American Association of State Highway and Transportation Officials, thirty-five out of the forty states responding believed that 49 CFR is adequate. The problem is the lack of adequate resources to enforce it and the lack of knowledge as to what is actually being transported. This has led to a number of actions which have been deemed inconsistent with the federal regulations.

NCSL feels that if the federal government continues to pre-empt state efforts at preventing incidents involving the transportation of hazardous materials, there must be an expanded effort on the part of the federal government to provide the states with the capability to enforce 49 CFR and to respond to such incidents. Unless the federal commitment is adequate to protect the public health and safety, NCSL will oppose preemption of state laws and regulations which lessen states' ability to carry out this responsibility.

As an example of the lack of federal commitment, only one federal inspector is assigned to the entire state of New Hampshire. While the particular inspector is well respected and hard working, we recognized that, in order to protect the citizens of New Hampshire, the state would have to establish its own hazardous materials program.

Thus, in 1979, the New Hampshire Legislature authorized the New Hampshire Department of Safety to adopt 49 CFR, and the state police was designated as the lead agency for the enforcement of these regulations. In November of 1980, a special hazardous materials and waste unit was created within the State Department of Safety. This unit is charged with the training of state police personnel and the enforcement of our hazardous materials regulations. Unfortunately, this unit is staffed by only two state troopers. While the entire state police force numbers 213 individuals, approximately 150 are actually assigned to patrol duty and available for day to day enforcement of the regulations. As is the case in other states, our personnel and financial resources fall far short of those needed to do a thorough job of training and enforcement.

However, working within the confines of our limited resources, we sent our hazardous materials and waste unit staff to the Colorado Training Institute. Upon their return, they developed a two-day training program tailored to the needs of New Hampshire. As a result of their work, in March of this year, a New Hampshire Inspection and enforcement training program was conducted for all field sergeants. The course will be provided in May for all corporals and thereafter for all state troopers.

I would like to reiterate that this training program was developed without the assistance of federal funds, and was developed due to the lack of adequate federal personnel assigned to our state.

I would now like to turn to the issue of how to improve the federal program for training of inspection, enforcement and emergency response personnel. First, I will focus on inspection and enforcement; in other words, prevention of hazardous materials transportation incidents.

The GAO report released on November 4, 1980 stated that "to encourage more State participation in DOT's regulatory programs, DOT will have to provide more training for State inspectors and enforcement personnel." NCSL wholeheartedly agrees. Currently MTEB provides no specific programs for training state and local enforcement personnel. Some state personnel have participated in the training programs offered by DOT's Transportation Safety Institute and some modal agencies provide training upon request. Most states provide at least some training for their own personnel, but the scope and effectiveness of these efforts varies.

NCSL strongly supports S. 960's emphasis on the establishment of regional training centers. We maintain that regional training programs established for the purpose of providing comprehensive training of state and local personnel, would prove cost effective and would be attended by more state and local personnel who would otherwise not be able to travel to a national training facility, like the transportation safety institute. Regional training programs would not necessitate large expenditures of federal dollars. While the Federal government would provide some of the initial "seed money," we believe that participating states and private industry would contribute to the establishment of such programs.

Contrary to the provisions of S. 960, NCSL believes that the Secretary of Transportation should not develop training programs, but rather should develop criteria and standards for training programs. Training programs should be developed by the centers in accordance with the Federal criteria and standards. While this approach would provide quality assurance, it will also permit programs to be tailored to the needs of particular regions.

The concept of the regional training facility should also be applied to the training of emergency response personnel. Generally, the primary emergency response unit in the event of a hazardous materials incident is the local fire department. There are about 35,000 fire departments in the United States with about 2.1 million fire fighters. Approximately 90 percent of the fire fighters are volunteers. Since many hazardous materials incidents occur in rural areas served by volunteer fire departments, training efforts must be focused on this segment of the emergency response system.

The DOT Transportation Safety Institute in Oklahoma City provides training for emergency response personnel such as fire fighters and law enforcement personnel. But between 1975 and 1979 the institute has trained only about 4,350 of these personnel in how to identify hazardous materials, what to do in accidents involving them and how to coordinate with other agencies in cleanup and disposal operations. DOT is presently distributing the "Emergency Response Guidebook," which describes how to identify and respond to hazardous materials incidents. This guidebook is being distributed to thousands of state and local emergency response personnel. But this is not enough.

What is needed is a program of emergency response training which is uniform, but more importantly, which is available to the response personnel who are first on the scene. The solution is a series of regional training centers which provide the

same type of training that is offered by the DOT Transportation Safety Institute. Again, these centers should not require a large commitment of federal dollars, but should be the result of coordinated efforts by the federal, state and local governments as well as the private sector.

The Colorado Training Institute in Denver, Colorado can be used as a model of federal, state, and local government and private sector cooperation in training emergency response personnel to deal with hazardous materials accidents. CTI is devoted solely to promoting hazardous materials safety through the training of emergency response and law enforcement personnel, shippers, carriers, dispatchers and other individuals who play a part in the transportation of these materials.

CTI is funded in part by the U.S. Department of Transportation through the Colorado Division of Highway Safety. In 1979, DOT provided \$70,000 to run the program. In addition, industry and state and local governments provided \$175,000 in the form of direct monetary subsidies, personnel and equipment. In that year, a total of 1,500 persons from 45 states and 4 foreign countries attended training programs at CTI.

CTI's training courses range in length from 3 days to 2 weeks. Among the programs are:

A 3-day seminar providing a comprehensive overview of hazardous materials including identification, labeling, shipping papers, first aid, containment and control.

A 5-day seminar for shippers and carriers on proper preparation of materials and papers for shipping, including a 1-day program on 49 CFR.

A 5-day course on cargo tank inspection, including safety features and appropriate emergency action.

A 2-week comprehensive course which expands upon the individual seminars and which covers all aspects of hazardous materials safety.

The Colorado Training Institute can certainly be viewed as a regional training facility of the type NCSL would support. Only through this concept of regional cooperation can training be made available to the thousands of state and local personnel who need it to handle the ever increasing numbers of hazardous materials traveling over our nation's transportation system.

But no training program, no matter how available or how comprehensive, can assure the adequate enforcement of federal regulations or the availability of trained emergency response personnel in the case of an accident, especially in the highway mode. Since we recognize the fact that there are extremely limited resources available, those resources must be concentrated where they will do the most good. NCSL suggests that the federal government seek to identify highway routes which carry the bulk of these materials and focus inspection and enforcement personnel in these areas. For example, a coordinated federal, state and local enforcement effort on major Interstate routes in such areas as Chicago or the New Jersey corridor, would certainly be able to identify container and vehicle safety violations for a majority of the volume of materials shipped by highways. State and local enforcement personnel would still be responsible for enforcement efforts on intrastate and "non-truck" routes.

NCSL would like to make one other point with regard to the role of the states in the regulation of the transportation of hazardous materials. If the federal government views the state as the primary means of enforcing 49 CFR, then the states must be aware of the shipments of large quantities of extremely hazardous materials through their jurisdictions. NCSL strongly believes that states should be able to require pre-notification of hazardous materials shipments either by a report from the transporter or by the federal government through a national pre-notification system. We recognize that the sheer number of shipments does not permit pre-notification of all shipments, but criteria should be developed which provide the responsible state agency the information concerning large shipments of extremely hazardous materials so that safety regulations are adequately enforced and emergency response personnel are prepared in the event of an accident.

With an adequate commitment of manpower and resources by the federal government, however, NCSL is prepared to work to encourage states to adopt legislation and regulations which are consistent with the federal regulations. Included in such state legislation should be the designation of a lead state agency which has overall responsibility for regulating the transportation of hazardous materials.

I would like to briefly summarize a prenotification system which was established by an act of the Georgia Legislature in 1979 and which has proven to be highly workable. The Transportation of Hazardous Materials Act requires that the Georgia Department of Transportation establish a 24-hour emergency operations center to serve as an information clearinghouse for all shipments of liquified natural gas, PCB's, and radioactive materials entering or leaving the state. These materials were



determined by the Georgia Legislature to be the most dangerous to the traveling public.

The law requires that all drivers carrying such loads notify the operations center before entering or leaving the state. The driver is required to provide the following information; (1) time and date of arrival at the state; (2) routes to be used in the state; (3) time and place of planned stops or overnight accommodations if any; (4) time of planned departure from the state; (5) name and quantity of material being carried; and (6) name of the shipping company. The driver is also required to notify the center of any changes in the above information while in the state, and must notify the center within one hour of leaving the state.

I would point out that the center does not notify local officials of shipments through their jurisdictions. However, should an accident occur in a local jurisdiction, local authorities equipped with the emergency operations center phone number will call and report the incident. Once notified of an incident, the center can refer to the transportation logs and determine the exact nature of the hazardous material involved. In turn, the center will notify the Georgia Department of Natural Resources' strike team, which will be immediately dispatched to the scene.

The Georgia, 16-member strike team is comprised of 4, four-man teams which respond to incidents involving; (1) hazardous waste; (2) radioactive materials; (3) oil spills; and (4) air emergencies.

Not only does this prenotification system ensure an expeditious response to emergency situations, but it serves as an important element of enforcement activities. For example, if a trucker fails to report to the center within one hour of departure from the state (according to his manifest schedule), the operation center will contact the Trucker's company. The company then has two hours in which to locate the trucker and notify the center. If the 2-hour time period expires, the center will send out its own personnel to locate the truck. All Center expenses are then charged to the company. In this fashion hazardous materials are closely monitored and the company held accountable for the actions of its truckers.

The Georgia system has been in place for less than 1 year, and to date no incidents involving the three materials have occurred. Under the system, approximately five to six shipments a day are logged in by the emergency operations center.

While I have chosen to highlight only one such prenotification system established by a state government, I would like to point out that at least 11 additional states have established similar system, those being the states of: Connecticut; Florida; Maryland; New Jersey; New York; North Carolina; Vermont; Tennessee; South Dakota; Rhode Island; and Pennsylvania.

Based on this information, NCSL strongly urges that Sec. 122(B)(1) of S. 960 be revised to call for a study of the existing state prenotification systems to determine the best method of establishing a national prenotification system. Following the study, NCSL believes that the U.S. Department of Transportation should develop such a system.

Mr. Chairman, the National Conference of State Legislatures appreciates your efforts to focus attention on this critical issue through these hearings. We look forward to working closely with this committee in developing legislation which recognizes the significant role that the states must play in regulating the transportation of hazardous materials, but more importantly, which will achieve the goal of protecting the public health and safety of our citizens.

Again, we thank you for this opportunity to express our views.

Senator DANFORTH. The next witness is Mr. David Teeter, project director, hazardous materials study, Puget Sound Council of Governments.

**STATEMENT OF DAVID TEETER, PROJECT DIRECTOR, HAZARDOUS MATERIALS STUDY, PUGET SOUND COUNCIL OF GOVERNMENTS, SEATTLE, WASH.**

Mr. TEETER. Mr. Chairman, members of the Committee. I am grateful to have the opportunity to appear before you today and to report on a very successful effort we have had underway in the Pacific Northwest.

The study was made possible under a cooperative agreement between the Puget Sound Governments and the Materials Trans-

portation Bureau of the Research and Special Programs Administration of the U.S. Department of Transportation.

The study was about quite frankly because local elected officials in the region, the four-county region in western Washington, including the greater Seattle metropolitan area, and several other communities including Tacoma and Everett, south and north.

But the local elected officials were concerned about the possibility of a major disaster occurring. And they wanted to know what they could do to better prevent accidents in the first place, and secondly, how better to deal with incidents, preventing them from becoming major disasters, when in fact an incident does occur.

There is a particular level of concern at the local government level related to the regulatory role. The local officials are concerned that while prevention is primarily perceived as a Federal responsibility, it is local emergency response personnel and local citizens who have to deal with accidents when they in fact do occur.

While the regulatory role and resources with which to exercise it are certainly inadequate at the local level, it doesn't really change the fact that the local agencies have a major responsibility.

So what then can be done, and they wanted to see what could be done in a cooperative effort. I need not document that one of the major problems in hazardous materials management is the fact that there are so many actors involved, levels of government, different industries. And it's quite difficult frequently to bring these people together. What we have attempted to in our region and the reason our project is so successful is that we put together a steering committee and advisory board which has the representation of these various groups, including carriers and shippers from all modes of transportation, Federal, State, and local agencies.

They have been organized through a series of very active working committees. I will briefly cover our findings, but I wanted to say before discussing the findings that quite honestly I think it's the advisory board experience, it's this public-private interaction within our region which has been the real success story in our particular project.

Whereas in several instances, two of the actors might have been running into one another in an atmosphere of litigation or confrontation, the environment has been changed substantially as a result of the good offices of this project.

Industry in particular deserves a great deal of credit. Firms like Sea-Land, and another company in the Northwest have graciously hosted and funded workshops bringing together experts from our region and from elsewhere in the United States.

And we have attempted wherever possible to bring together people with expertise. This expertise doesn't reside only at the local level or at the federal level or the state level or at the industry level. There are resources available everywhere.

We have tried to focus this. That is what we have identified as the major problem, that need to focus resources more effectively.

Now I would like to briefly summarize our findings and recommendations. As I just mentioned, we feel that the risk of a disaster and accident prevention can be best managed by better utilization

of personnel, expertise, and equipment for the most part already available in our central Puget Sound region.

In doing this, looking at the problem this way, there certainly might be areas where additional funding is needed. But we really think that costly new systems are not essential to better manage hazardous materials.

The expertise is already there. Senator Gorton in his comments briefly indicated what our project has addressed, so there is no need to cover that. But we've tried to really outline the nature of the problem that the communities in the central Puget Sound region faces.

Some of our more significant conclusions are, number one, the greatest constraint on more effective materials management is the propensity of various groups to more or less go it alone.

There has been to date not enough evidence of these groups working together. So the most essential thing is to get these groups working together in more constructive forums to coordinate their resources, not only at the top levels of organization, but getting the people who have operational responsibilities to work together.

Second, our project looked at the needs for emergency response quite carefully. One of the things we have discovered in response to incidents, that there is not enough agreed upon definition of roles and responsibilities before an incident occurs.

So you have probably heard the question, "who is in charge?" That issue crops up, not so much because people are jealously competing to be in charge, but quite frankly, there is no specification beforehand as to who is going to be in charge.

The third item I wanted to point out is perhaps the most important item our study has addressed. We really feel that unified and systematic training involving both the public and private sectors, where possible, is probably the best way to cheaply improve hazardous materials management.

Several people have mentioned Colorado Training Institute. And it's a fine example of what can be done through training. This can result in significant improvement of hazardous materials management.

We identified a host of options and flushed them out looking at feasibility costs and additional legal authorities which might be needed. Those are documented in the final report which will be made available to the committee by the U.S. Department of Transportation.

But I wanted to identify some of the priority areas real briefly. First in the area of regulation and prevention, we feel that there is a need for revised Federal approach to transportation regulations. The U.S. Department of Transportation attempted to provide criteria to State and local governments regarding routing of hazardous materials serves as an example here.

We think given the climate in which inconsistency rulings are beginning to crop up, that if the Federal Government can provide standards and guidelines for State and local governments, State and local governments will have a better idea of what in fact they can do and it will be a much more streamlined process. I might add, industry should be actively involved in this process as well.

Second, and it's the subject of the legislation which Mr. Cannon discussed, there is a real need to identify roles and responsibilities of the various agencies at all levels of government, particularly in emergency response.

There have to be some guidelines established which will facilitate more efficient response to hazardous materials incidents. This isn't a problem in my instance, but it can be an enormous one where there is a complex incident or major disaster. You can't afford to have disagreement and so forth.

Finally, the need for unified public-private training in areas relating to compliance and emergency response. Wherever possible, this ought to be encouraged. So that has been a major result of our project.

In summary, I would like to say that the Materials Transportation Bureau of the U.S. Department of Transportation is doing a great service by providing support for these regional training centers.

This will provide greater incentive for effective training, and it provides an opportunity to bring the public and private sector together and a very meaningful format.

As I said before, this could yield wonderful results in terms of hazardous materials management.

We also feel again in the area of training, that Congress should encourage as you deem appropriate the development of a focal point at the Federal level for development and dissemination of training programs designed to assist hazardous materials management, and to serve all the parties who are involved in hazardous materials management.

Thank you, Mr. Chairman, for the opportunity to appear here. If you have any questions, I will be happy to answer them.

Senator DANFORTH. Thank you.

Senator Gorton.

Senator GORTON. A couple of questions. I can put them together, I guess. What do you think is the likely future of this project? You have a report accomplished. Is something tangible going to result without any further Federal involvement? And specifically address the subject which seems to have been treated very lightly here, the role of the State.

Mr. TEETER. What we have now as a result of the final report is an action plan, more or less. What has to take place is implementation.

We have worked actively with the State of Washington. Given the new administration and some of the things which have been going on of which you are certainly aware, Senator Gorton, it's been difficult to get an audience.

However, that is changing now. But to demonstrate the level of commitment that the advisory board members have to this project, particularly the private sector, we have recently had industry sign checks, essentially, to perpetuate this study, to take it into an implementation phase.

I might indicate that there are two or three things the advisory board thinks are quite important. No. 1 is hazardous materials "Good Samaritan" legislation to allow emergency first responders to better utilize private sector capability when an incident occurs.

We came very close to passage this past session in the State of Washington, and we feel that the next session there is an opportunity to do that.

The second item is statewide hazardous materials training in Washington State. So there is not a lot of money available right now, but people are beginning to come across demonstrating their commitment in dollars and cents, and it's very gratifying.

Senator GORTON. Thank you.

Thank you, Mr. Chairman.

Senator DANFORTH. Thank you, Mr. Teeter.

Mr. TEETER. Thank you.

[The statement follows.]

**STATEMENT OF DAVID TEETER, PROJECT DIRECTOR, STUDY OF TRANSPORTATION OF HAZARDOUS MATERIALS, PUGET SOUND COUNCIL OF GOVERNMENTS, SEATTLE, WASH.**

Mr. Chairman and members of the Subcommittee, I am grateful for the opportunity to appear here today to tell you a remarkable story. My name is David Teeter. I am project director for a study of the transportation of hazardous material just concluded in the central Puget Sound region of Washington State. The study was made possible primarily by a cooperative agreement between the Materials Transportation Bureau of the Research and Special Programs Administration of the U.S. Department of Transportation and the Puget Sound Council of Governments.

Our study came about because local elected officials in our region were concerned about the possibilities of a major hazardous materials disaster occurring, as they had in Waverly, Tennessee, Mississauga, Ontario, and many other communities in North America. They wanted to know what it takes both to prevent accidents with a great potential for disaster, and to deal with the inevitable accident before it turns into a disaster.

In particular, they were concerned that, while prevention is primarily perceived as a Federal responsibility, local emergency response people and local citizens are stuck with the disaster once it occurs. While local police powers may not be adequate to prevent accidents—and efforts to do so are often attacked legally as interference with interstate commerce, local responsibilities in case of an accident are awesome. What, then, can be done?

We realized at the beginning of our study that prevention of and response to hazardous materials accidents involve a great many actors. The Federal presence is greatest in prevention, although there is also a Federal role in response and clean-up to prevent environmental damage. The local role is primarily in response, although local governments too have a role in setting and enforcing some safety and routing restrictions. State government has major responsibilities in both areas.

Private industry—manufacturers, shippers, carriers and users of hazardous materials—are also very much involved. Their compliance with regulations and standards is essential to safe handling. Their expertise is vital to both proper regulation and response to accidents. Perhaps more significantly, their people and property are particularly endangered by accidents.

Therefore we created a large Advisory Board, with representatives from all levels of government and the private sector. (A list of members is attached.) The Advisory Board, working through a series of committees, became a very active participant in the study.

Mr. Chairman, before I turn to our major findings and recommendations, I want to emphasize that the Advisory Board experience may have been the most significant thing to come from our efforts. Public safety officials and industry representatives discovered that they were not adversaries, but that they had both shared interests and complementary resources to offer. A propensity to litigate gave way to a real desire to cooperate. Firms like Sea-Land Services and Northwest Tank contributed money and resources to host workshops and assist mock emergency exercises. Their people worked along side public officials to determine the needs and strategies that form the basis for improved hazardous materials management.

Now I would like to summarize briefly our main findings and recommendations. Our study has found that the risk of disaster can be substantially reduced by better utilization of personnel, expertise, and equipment already available in the region. By viewing, as a system, both the problems associated with the transport of hazardous materials and the resources available to protect the public, we can take actions that do not create costly new "systems".

As a first step, the present situation was documented. The flow of particularly dangerous materials in the region was inventoried—by quantity, mode of transportation, and route. The study team received unprecedented assistance from its Advisory Board in assembling this information. Advisory Board meetings, special workshops, questionnaires, and mock accidents were all used to assess current hazardous materials management and response capabilities. The regulatory basis for accident prevention and the experiences of other states and regions were also analyzed.

Our most significant conclusions are these:

1. The greatest constraint on effective hazardous materials management is the "go it alone" approach that has prevailed among public agencies and private companies.

2. Public/private cooperation in better hazardous materials management is necessary to effective risk reduction and it is an idea whose time has come in our region.

3. The regulatory system that governs the transportation of hazardous materials can be made more effective by (a) simplification; (b) involvement of state and local governments in development of regulations; (c) private sector incentives for compliance; and (d) compatible compliance training.

4. Better use of existing resources can improve response to accidents involving hazardous materials. By its nature, response involves numerous public authorities and private actors. Advance assessment of and agreement on response needs and objectives (roles, unified command, containment, clean-up and disposal procedures) make on-scene response management better.

5. Immediate response and containment approaches have not, by and large, been sufficiently sensitive to long-term environmental effects.

6. Unified, systematic training that involves both public and private sector personnel as trainers and trainees is the most significant new step that can be taken to improve performance in these areas.

We assessed a large number of recommended improvements, considering their effectiveness, feasibility and costs. Most of these will hopefully be implemented over time. They are too detailed to discuss here, but I shall leave a copy of the report with the Subcommittee for review. We determined that a few, relatively low-cost actions deserve immediate attention. If taken soon, they will set in motion a systematic approach to hazardous materials accident prevention and response that will eventually make us all a bit safer. Very briefly, these priority actions are:

1. A revised federal approach to transportation regulations that both involve and provide guidance for state and local regulations and enforcement.

2. The identification of roles, responsibilities, command structures, and available resources needed for effective contingency planning.

3. Enactment of a "Good Samaritan" law to facilitate private sector support in response to incidents.

4. A simplified, statewide, "one-call" notification system for response.

5. A unified public/private training program for responders that is based on a "needs of the job" assessment for all parties involved with manufacturing, packaging, transporting hazardous materials and responding to hazardous materials incidents.

In concluding, I would like to draw your particular attention to two of these points.

First, local governments do have a role in preventive regulation—one pressed upon them because of their response and public safety obligations. Clearly, most jurisdictions do not wish to hamper commerce unduly; all realize that hazardous materials must move in commerce as a part of our economic life. However, local officials have strong incentive to enact and enforce special kinds of restrictions. The number of such efforts—and the volume of consequent complaints from industry—is growing.

A more sensible approach to federal rule-making can turn these effects to more productive ends. The rule-making process for routing radioactive materials provides a model. Federal consistency standards can be established, but specific rules can be developed with the active leadership of state and local governments (perhaps at a federal regional level or a substate level). Together with the attempt to simplify rules and coordinate the federal rule-making process amongst the various agencies, this mechanism for a local and state rule-making role can encourage a more effective hazardous materials management system.

Second, training is perhaps the best single key to more effective management. Training should, however, be based upon a systemic view of manufacturing, packing, shipping and using hazardous materials. We developed a knowledge and skills inventory for all parties involved in the management of hazardous materials. We also learned that if public and private, federal and local, fire and police personnel

are trained together, their actual prevention and response capabilities will be enhanced significantly.

The Materials Transportation Bureau of the Department of Transportation is on the right track by providing support for regional training centers. It is providing incentives for more effective training. We urge you to continue supporting this effort. We further urge that the Congress encourage, as you deem appropriate, the development of a focal point at the federal level for the development and dissemination of training programs designed to serve all parties involved.

Again, Mr. Chairman, I appreciate this opportunity to report on our experience and findings in the Pacific Northwest. We believe that there are opportunities for significantly enhancing the safety of our citizens without increasing regulatory burdens or hampering commerce. I commend our report to you, and will be happy to answer questions. Thank you.

Senator DANFORTH. It is my understanding that Mr. Dempsey has a time problem. Therefore, if he is still here, Mr. Dempsey, if you would like to testify now, please proceed.

**STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS, ACCOMPANIED BY THOMAS PHEMISTER**

Mr. DEMPSEY. Thank you very much. I am accompanied by Mr. Thomas Phemister, the head of our bureau of explosives and our resident expert on the subject we are considering today.

I put in a rather extensive statement which I ask be incorporated into the record.

We are in favor of, I suppose, most of the goals that S. 960 is aimed at in terms of better training, better coordination of all the affected and independent parties and that sort of thing. So, it is with reluctance I say on the whole we don't like the bill very much.

There are some parts of it and I will mention those specifically that we think are pernicious. Other parts of it we think are basically unnecessary.

As an industry that through the good work of this committee last year has become for the first time in many decades significantly deregulated, we draw back from a bill that promises, so far as we can tell, more regulation, more reports, more studies, more issuance of rules, regulations and that sort of thing from the Federal level.

So far as we can tell, perhaps also from the local level. This is a subject that arouses a great deal of concern, we understand, and reasonably so. But speaking for the railroads, it seems to us there simply has not been a need demonstrated for another layer of regulations and more studies and more reports.

The railroad system is the safest system for the transportation of hazardous materials. We transport about 70 percent of these materials, and we are involved in only about 7 percent of the accidents. Just looking at 1979, the last year for which we had complete data, we moved 1.1 million carloads of hazardous materials and only 165 of those involved releases of any sort with 228 injuries and no fatalities at all.

Those figures are not atypical. Just look at the last decade, 1970 to 1979. Five years out of the 10 we had no fatalities at all involved in the transportation of these materials and in 3 of the other years only one or two. We did have tragic incidents in 1974 and 1978, for example, Waverly, Tenn., in 1978.

So, we had 24 fatalities that year, 10 in 1974. Those incidents, of course, are terrible and much to be regretted. But they are very much an aberration. Indeed, we look forward with great optimism to the future because of the changes in design and retrofit that were implemented with respect to tank cars that were involved in those kinds of accidents.

This committee has heard detailed testimony on those extensive research projects and the steps that have been taken. So, while one can give no guarantees, certainly the chances of repeating such an incident have been radically reduced by the measures taken under existing law.

When one gets beyond the statistics, one can look at the projects going on. You have seen the Puget Sound effort just now which has been very successful. If one can have a law to compel a series of Puget Sound exercises throughout the United States, we would be in support of such a law.

But, we are doubtful law can do that sort of thing. If you look at the testimony of the Department of Transportation, they are engaged right now in the kinds of training and coordination enterprises that this bill apparently is aimed at. I suppose one could tell the Secretary to do it more, or do it again, but we are doubtful that that is a productive approach.

The Office of Technology Assessment looked at the whole business of railroad safety legislation and concluded existing law gives the Secretary all the authority he needs to deal with whatever problems there might be. We also encourage private actions. I could give a number of examples of research projects we have going on—cooperative projects we have going on. After the 1978 accidents, for example, we set up an interindustry task force on transportation of these materials that had sitting on it some of the principal chief executives of railroads and chemical companies. It studied the problem for a good many months and issued a report that I am sure has been supplied to this committee.

One of the results is a training program for firemen, the people who are typically called to respond to these accidents. There is uniform consensus that this is an excellent program. We have done it at our expense. We will show the program to about 250,000 firemen free of charge and free of Federal or State assistance or regulations.

Just one further thought. Federal regulation is necessary, of course, in many areas. But it isn't always, I must say, very helpful in the safety area. For example, we had developed in the industry a step we consider very important in terms of response to these accidents—a special identification code relating to hazardous materials so that if you have a tank car involved in a derailment, you would know exactly what was in that car, what kind of material was there. Computer printouts that give instructions are carried right on board the train to tell the local officials exactly how to deal with that particular commodity.

Under the authority that the Department, the Materials Transportation Bureau has now, they have wiped that out. They have specified a different kind of code, a four-digit code instead of a seven-digit code, that doesn't permit you to adequately identify the commodity. We think this is a major step backward in terms of



safety. As far as we can tell, the only reason for doing it is that the United Nations recommends this four-digit code, a form of which some foreign countries have.

Another example is the shelf coupler that finally the Department of Transportation permitted us to put on tank cars. We think this is one of the best steps taken in terms of promoting safety of transportation of these materials. They prevented us from doing that for a good 3 or 4 years.

It isn't always to the advantage of the parties interested in promoting safety to have additional Federal, State or local regulations. Just a word or two about some of the particular provisions of the bill that give us great concern.

The routing provision. We don't need another study of the routing provision. The Department conducted a study last year. Its conclusion was that had the transportation of these materials commodities been rerouted so as to avoid densely populated centers, the casualties associated with these movements would have increased by some 20 percent.

Well, you wonder why that is, but the answer, I am sure you will agree, is perfectly obvious. If you take the materials off the first-class main line track that they are going on now, to reroute them, they will be on secondary lines that are not nearly as well maintained a good bit of the time. And, of course, the danger of derailment is magnified many times.

So far as notification is concerned, this is simply unacceptable. I can understand perhaps how it might be possible for individual truckdrivers who know exactly what they are carrying and when they are coming into the State. But so far as railroads are concerned, it would put an impossible burden on the roads because we carry 1.1 million carloads a year and the interchanging railroad doesn't know what it gets until it gets it, and doesn't know on what train it's going until it makes the train up.

The delays that would be associated with that kind of prenotification would be enormous. The consequence would be that we would have these trains stacked up in the yards and have these hazardous materials on the road and in the yards for a much greater period of time. Costs would be astronomical. As a practical matter so far as railroads are concerned, that is simply something we would consider to be intolerable.

There is one other provision that gives us some concern, and that is the Federal Emergency Management Agency being introduced into the area of training and establishing standards and that sort of thing.

Those authorities are now vested in the Secretary. We think that is where they ought to stay. DOT is the expert with respect to train operations. FEMA is not. To impose another authority seems to us to introduce an unnecessary complication into the already complicated regulatory scheme.

I would just, in concluding, like to support the witness who testified on the Good Samaritan provision. If this bill is passed in some form, we would hope it would incorporate the Good Samaritan provision so as to encourage the kind of assistance in responding to these incidents that we all really want to see.

Thank you very much.

Senator DANFORTH. Thank you, Mr. Dempsey. Senator Gorton.

Senator GORTON. No questions.

Senator DANFORTH. Let me ask you this question. Railroads which carry hazardous materials, if they have an accident, they can expect lawsuits, isn't that correct?

Mr. DEMPSEY. That is certainly correct.

Senator DANFORTH. They can expect to be held liable for the release of hazardous material?

Mr. DEMPSEY. Yes.

Senator DANFORTH. It would be absolute liability, wouldn't it?

Mr. DEMPSEY. It becomes virtually absolute liability because once the place has blown up, it's awfully hard to tell what caused the blowup. So virtually, absolute liability. It is very difficult indeed to get the insurance to cover it. That is the reason why the incentive to promote the safety of this type of transportation is just enormous. No Federal or State agency could be more motivated to promote the safety transportation than the private parties are.

Senator DANFORTH. You said it's difficult to get insurance. However, is it possible? Do the railroads, in fact, buy insurance to cover disasters?

Mr. DEMPSEY. Yes; we do. I will ask Mr. Phemister to speak in more detail on that.

For a while, it was considered impossible and we were going to establish some sort of pool. I don't know where we are now. Tom, do you know?

Mr. PHEMISTER. It still varies from railroad to railroad, but railroads are adequately insured. Typically they have a self-insurance level of \$1 million to \$5 million, an umbrella on top of that. The pooling arrangement is still under study.

Fortunately, our safety record is good enough that maybe the impetus to form that insurance pool has backed off a little in these days of other more pressing problems.

Senator DANFORTH. In connection with the purchasing of insurance, if it's purchased, do the insurance companies involve themselves in analyzing the safety and the transportation methods used by railroads in transporting hazardous materials?

Mr. PHEMISTER. That will differ from insurance company to insurance company.

Senator DANFORTH. Assuming insurance is available, would insurance rates vary according to the methods used by railroads in transporting hazardous materials?

Mr. PHEMISTER. I would have to research insurance rates and their application.

Mr. DEMPSEY. I would be somewhat skeptical because I believe the method of handling these materials is pretty much uniform. The distinction would be very, very difficult.

Senator DANFORTH. Would that, regardless of legislation, be the case?

Mr. DEMPSEY. Yes.

Senator DANFORTH. So we could pass any bill. We could pass S. 960, or we could repeal the act. Nobody is suggesting we do. But let's just assume that just hypothetically. We could do anything with the statute, and as far as you are concerned, the railroads

would have standard operating procedures for carrying hazardous wastes?

**Mr. DEMPSEY.** That's right. What we are concerned about really is interference with our operating procedures. For example, this is to go to another agency I talked about, but with respect to transportation of nuclear waste, we want to put it on special trains and operate them in a different fashion than we do other trains. That obviously is much more costly, so we developed a tariff that would permit us to do that and the tariff is struck down. There we are.

**Senator DANFORTH.** Thank you very much.

[The statement follows:]

**STATEMENT OF WILLIAM H. DEMPSEY, PRESIDENT, ASSOCIATION OF AMERICAN RAILROADS**

The Association of American Railroads welcomes the opportunity to comment here today on the proposed amendments to the Hazardous Materials Transportation Act.

My name is William H. Dempsey and I am president of the AAR.

The railroads which are members of the Association employ 94 percent of the workers, produce 97 percent of the freight revenues and operate 95 percent of the line-haul trackage in the United States.

While the railroad industry appreciates the general concern over prevention and response to transportation incidents involving hazardous materials, we do not believe that this particular bill will further this end. There are already in progress a number of significant research and test projects, some of which have been implemented with dramatic results, as well as extensive training and inspection programs. To ignore the progress in all aspects of rail safety indicates a mentality from a former, and very different, era. When viewed in perspective, I believe this Committee will agree that in terms of human life, rail transportation is the safest form of general transportation in America today.

S. 960 is premised upon a characterization of rail movement of hazardous materials as a clear and present danger to population centers. Not only is this premise misleading, it is grossly unfair to the railroad industry. Before dealing with specific provisions of S. 960, I, therefore, want to acquaint the Committee with the true picture of railroad safety today and the reasons behind this superb record. The language of the Bill makes no reference to the significant safety-related activities—including many specifically aimed at the transportation of hazardous materials—that have been pursued in the last decade by both the Federal government and private industry. The railroad industry has also been pumping record amounts of money into roadway and equipment improvements and maintenance, despite the industry's continued inadequate revenue levels. That these programs have been successful is shown by a review of recent safety data.

Although railroads provide approximately 70 percent of the transportation of all hazardous materials (excluding petroleum), in 1979 they were involved in only about 7 percent of all incidents involving the transportation of these materials. The railroads moved approximately 1.1 million carloads, or about 80 million tons, of hazardous materials during 1979. Only 165 experienced releases in an accident, less than two-hundredths of one percent. That year there were just 228 injuries related to the transportation of hazardous materials. There were no deaths. Final statistics for 1980 are not yet available. Two members of a train crew were killed at Richland, Washington, in 1980, when the train derailed as a result of a mudslide and a tank car of anhydrous ammonia was punctured.

In 1978, 1.1 million cars of regulated hazardous materials were transported with 221 injuries. Only 698 were reported to the AAR Bureau of Explosives as being derailed and only 151 of these lost lading.<sup>1</sup> This means that the railroad industry accomplished a derailment/product loss ratio of .014 percent.

Another 852 cars were reported to have leaked or splashed some product. Usually "leakers and splashers" result from someone at a shipper's loading point failing to secure the fittings or dispatching a car with defective gaskets or seals. While such incidents cannot be ignored, I should point out that they are not usually caused by the carrier.

<sup>1</sup> While the total number of derailments may appear to some to be high, it must be remembered that this total includes every instance in which wheels leave the track even though there is no damage at all and the incident is a minor inconvenience rather than a dangerous episode.

These are typical statistics. Despite the lurid publicity that railroad accidents involving hazardous materials receive, during the decade from 1970 to 1979 there were no fatalities due to this kind of transportation in half those years. In three other years, fatalities totalled one or two. Only during 1974, with ten deaths, and 1978, with 24, was the safety record disrupted.

Seven of the 1974 deaths happened at Decatur, Illinois, when a tank car of liquified petroleum gas (LPG) suffered a head puncture and the resulting vapor cloud erupted into flame with terrible results. The tragedies in 1978 occurred at Waverly, Tennessee and Youngstown, Florida. At Waverly, a pressurized car of LPG suddenly opened up several days after the derailment. At Youngstown, the rails were spread open by vandals, leading to the first deaths due to the rail transportation of chlorine in several decades. While the railroads record is excellent—particularly when compared with the record for highway movements—the railroads have not been complacent. As long as people operate large pieces of equipment in proximity to where others live, there will be some risks, and the industry is continuing its efforts to identify and reduce these risks. It is in the best interest of the railroads to make their operations as safe as possible, because the railroads and their employees bear a large share of the human and economic cost of rail accidents. To this end, the railroad industry in the past decade has instituted an intensive search for solutions to risks posed by the transportation of hazardous materials.

#### PRESSURIZED TANK CARS

The major safety-related project of the railroad industry—in fact, the most extensive freight safety study ever undertaken by private companies—has been one dealing with pressurized tank cars such as the ones involved in the Decatur and Waverly accidents. The cooperative program involving the AAR, the Railroad Progress Institute (RPI), and the Federal Railroad Administration (FRA) was started in 1970, and so far \$5 million has been invested in it.

Based on recommendations that developed out of the project, the AAR has required since January 1979 that all new tank cars be fitted with shelf-type couplers. DOT issued regulations in 1978 that required all in-service Type 112 and 114 pressurized tank cars to be retrofitted with these couplers by the end of 1978. Type 112 and 114 tank cars were also retrofitted with head shields and those used to transport flammable gases with headshields and specified thermal insulation.

Shelf couplers are designed to resist disengagement in a derailment and prevent the accidental "spearing" of a tank car by an adjacent car. The head shield also protects against "spearing"—identified as a major cause of tank car ruptures in derailments—by virtually armor-plating the ends of each tank car.

To minimize the potentially disastrous effect of fire loading to an explosion of hazardous materials, thermal insulation with jackets and thermal insulation spray-on coatings have been developed. Insulation with jackets, which also includes a built-in head shield for the bottom half of the end of each car, is being used in most retrofittings.

Through Docket No. HM-174, the Materials Transportation Bureau (MTB) is requiring 105 tank cars to be similarly protected. The regulation also mandates the retrofit of all tank cars with vertical restraint systems by March 1, 1985.

#### TRACK TRAIN DYNAMICS

Perhaps the most comprehensive research program now underway in the railroad industry is Track-Train Dynamics, begun in 1972 and supported by the FRA, individual railroads, the railroad supply industry, the Transportation Development Agency of Canada, and the AAR. Through this program, there has been developed a set of guidelines for train handling that describe precisely to a locomotive engineer the optimum manner of maintaining his train in a stable, dynamic condition under a wide variety of terrain, climatic, and inconsistent conditions. Those guidelines with head shields and those used to transport flammables have been widely adopted and have eliminated a large number of heretofore unexplained derailments.

The program has also produced analytical models for accident investigation and "truck hunting" behavior, which is the oscillation of freight car trucks or rails; fatigue guidelines for car structure components; and evaluation of truck materials through testing at the DOT Test Center near Pueblo, Colorado, and at the AAR's Research Center in Chicago.

#### FACILITY FOR ACCELERATED SERVICE TESTING

A second major cooperative effort is the Facility for Accelerated Service Testing, also known as FAST, operated at the Transportation Test Center in Pueblo, Colorado. In this program, the FRA provides the operation of a train that circles a 4.8 mile

loop many times so as to expose the track structure and the equipment to an operating environment between five and ten times the intensity level of conventional railroad operations. Variables can be isolated and comparative studies made between equipment or track with much more precision than is possible in revenue service with a variety of trains and cars that must be moved over the system. Deficiencies in some equipment have shown up before that equipment was introduced in service. Opportunities for choosing advanced technology have emerged and are being adopted by many railroads in their procurement decisions.

#### BOTTOM FITTINGS

In another effort to improve the safety of tank cars in an accident environment, the AAR has issued specifications that require tank cars with bottom fittings, such as valves, sumps, and washouts, that extend more than certain specified distances from the car shell to be protected. To meet this requirement, many tank car manufacturers are equipping cars with internal valves or protecting external valves with "skids". Fittings that extend beyond a certain distance from the tank shell must be designed to break away on impact without resulting in loss of product from the car. These precautions insure against leaks caused by a valve breaking during a derailment.

#### SHIPPER LOADING PRACTICES

The railroads believe that even a "leak and splash" ratio of .09 percent can be improved. The AAR's Bureau of Explosives, a major Southeastern railroad and a group of concerned shippers got together to prove it. One of the highest concentrations of leak and splash incidents seemed to be keyed to a seasonal movement of a corrosive fertilizer solution out of a relatively small area of Florida. Several visits by the Bureau's inspector assigned to that district, conferences between the carrier and the shippers, and a decision to institute car maintenance practices which would better ensure the departure of fully transportation ready vehicles paid off. From more than 60 incidents of leaking or splashing in 1978, there were fewer than a dozen in the 1979 season.

#### SAFE OPERATING PRACTICES STUDY

In 1979 the AAR, in cooperation with the supplier-supported RPI and the Chemical Manufacturers Association, launched the Safe Operating Practices Study to identify operating practices used by railroads that make the transportation of hazardous materials safer.

The study participants hope to determine why some railroads have fewer accidents involving hazardous materials than others by drawing a relationship between low accident rates and specific operating practices. The study will consider such practices as placement of hazardous materials cars in a train, train speeds, and restrictions individual railroads place on trains carrying hazardous materials.

These many industry test and research projects prove the industry's ability to recognize problems and to find and implement solutions to them—as long as it can act freely. (Shelf couplers for pressurized uninsulated tank cars were developed and ready several years before the DOT would permit their installation.) The recent success with the reduction in the occurrence of leaks and splashes on shipments of corrosive fertilizers from the Southeast demonstrates the industry's ability to fine tune what is already a good system. The drastic decline in hazardous materials related injuries for 1979—plus the fatality record over the past decade—adds further testimony to the proposition that no drastic cure is needed for an illness that hasn't struck.

#### INTER-INDUSTRY TASK FORCE

The research by the rail industry is not the only effort which has been made to improve a good safety record. A number of response training programs for railroad and local agencies' personnel have been put together and distributed. One source with excellent results is a group of railroad and chemical executives who met to discuss their common concerns about the safety of transporting hazardous materials by rail. Out of this meeting the Inter-Industry Task Force on Rail Transportation of Hazardous Materials was formed.

One of the most significant accomplishments of the Task Force was the creation of a program—"Recognizing and Identifying Hazardous Materials"—aimed at saving the lives of the often volunteer emergency response forces. The program was designed to be shown to about 250,000 volunteer firemen. To date, over 100,000 have attended presentations. It seeks to acquaint fire fighters with potential locations of

hazardous materials in their communities—hospitals, agricultural supply dealers, or local gasoline stations—and to help them use this ability to recognize dangerous commodities for their safety at the scene of a transportation accident. Viewers are told where to find shipping documents such as waybills or train manifests and how to use the information on those papers to identify the products. Once identification is accomplished, the program demonstrates several available sources of emergency information—publications of the Bureau and other recognized experts—and the CMA's CHEMTREC service.

"Recognizing and Identifying Hazardous Materials" was prepared by the shipping and transporting companies without government funding and is being distributed and shown at no cost to any fire company or community requesting it. Because of the outstanding talents offered by the railroad and chemical industries in developing the program and its distribution system, the total cost will be miniscule in comparison to what is often thought of in programs of such scope.

The Task Force also recommended that a crew of a train carrying hazardous materials be provided with a document identifying cars, their positions, and the material in each. Crews are also armed with information concerning the corrective actions that should be taken by emergency personnel if the cars are involved in an accident resulting in the release of material.

#### STANDARD TRANSPORTATION COMMODITY CODE

It was in an effort to eliminate the problems of identifying hazardous substances at the scene of an accident that the railroad industry developed a special part of the Standard Transportation Commodity Code to relate specifically to hazardous materials. The STC Code was already in use throughout the rail industry (and most of the remainder of surface transportation as well) because it provided a commodity specific identification number for each item known to move in commerce.

Originally the STC Code was created for reporting movement statistics to the Interstate Commerce Commission. Because the STCC numbers were designed with electronic data processing in mind, the potential to expand the usefulness of the seven-digit commodity identifiers is limited only by the needs and imagination of the computer user.

As a part of STCC, the railroads developed the "49-Series" numbers, i.e., 49 000 00, not to only identify hazardous materials but to rank them according to primary, secondary and tertiary levels of hazard. Being product specific, STCC identifies each of the more than 1,600 commodities now regulated by DOT. Such specificity is desirable. If a person is burned, for instance, the medical attendants will be able to know the exact name of the material (if it was so identified by the shipper) rather than just the generic "Flammable Liquid" descriptor.

Through foresight the "49-Series" was also designed to be able to accommodate EPA-designated hazardous substances and hazardous wastes. Under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, known as "Superfund", carriers are required to notify the National Response Center of all releases of hazardous substances. Carriers obviously need to know that they are carrying a hazardous substance in order to comply with any notification requirement. The Superfund Act requires MTB to list hazardous substances (in addition to those designated pursuant to section 311 of the Clean Water Act) as hazardous materials, presumably for the purpose of requiring shippers to inform carriers whenever they offer hazardous substances for transportation. MTB has published a list of hazardous substances, but has not made any of its regulations applicable to substances on the list. Contrary to Congressional intent, MTB has not required shippers to note on shipping papers that the Superfund hazardous substances are being transported. Incredible as it may seem, MTB has published a meaningless list.

Of course, hazardous material identification is only the beginning of the uses to which STCC numbers are put. With computers, the generation of a train consist containing hazardous materials can also cause the generation of emergency response information to accompany those cars to destination. The information automatically triggered is that contained in the Bureau of Explosives' publication "Emergency Handling of Hazardous Materials in Surface Transportation" which has been widely distributed within the transportation and emergency response communities.

Once the STCC number for a hazardous materials shipment has been entered into a railroad's computer, it can be put to a multitude of uses. As an example, if a particular commodity must for some reason be transferred from one car to another, the yard file can be electronically searched for an empty car last containing a commodity compatible with the load which must be transferred. Not only this, but the yard file can also show the presence and location of cars carrying materials which could be used to neutralize a spill. If such a car does not now exist in the

yard, the consists of incoming trains can be searched and, when the right match is made, its arrival time can be predicted. The potential for the beneficial management of hazardous materials traffic took a major leap forward with the institution of STCC and the railroad industry believes that the benefits have only begun to flow.

Against the proven success of the STC Code, MTB has adopted a United Nations numbering scheme, a four digit method of identifiers which supposedly has as a benefit the fact that the numbers don't mean anything.

The regulations require that a 4-digit number (the UN-Code) become part of the shipping name, appear on all shipping documents, and be attached to tank cars. The alleged purpose is two-fold: first, the United States would be brought back into line with the rest of the world and, second, the numbers provide access to an MTB-developed emergency guide book.

According to information AAR has been able to gather, the UN-Code is not a universal, international identification at all. Canada is still in the early stages of regulatory consideration, Great Britain has adapted it into a different system, and the majority of the European common market countries are nowhere near mandating the UN-Code as the answer to perceived hazardous materials identification problems.

More importantly, the proposed format, in the opinion of the Bureau of Explosives and other industry experts, could mislead the user to the detriment of safety. MTB's proposed guide is not commodity specific. It "lumps" groups of materials under a UN-Code number for reference to a common page within the guide. Also the guide, which is meant to be used in an emergency situation by unfamiliar, local responders, is subject to misuse if any of the numbers are transposed. While this is a fault common to any numeric system, it is especially so with a system which has no internal logic (where the numbers do not "mean" anything but merely point to an index).

Serious doubts should be cast on MTB's UN-Code both because it does not represent the best that the state of the art has to offer and because in an era of soaring inflation it simply does not make economic sense for a governmental agency to attempt to duplicate what the private sector already has in place and functioning.

This problem is compounded by MTB allowing easily understandable words such as "flammable" and "poison", which are presently found on placards, to be replaced by those obtuse numbers which are meaningless to most people and convey no immediate information to those involved in train placement or emergency response. Placards are the most effective method of conveying information immediately. Not everyone present at an emergency will have the guidebook, and initial responses to the emergency are likely to be taken before the guidebook is consulted. Descriptive wording on a placard conveys invaluable information in a manner that cannot be duplicated by numbers, colors, or symbols.

Despite strong opposition from recognized safety experts in the railroad industry (experts with more experience in the emergency response needs at a derailment than anyone), MTB not only refused to modify the alternate, but expanded it to non-tank cars, and an all-white diamond the size and shape of a placard was permitted for the display of UN-Code numbers on cars which are not required to be placarded. By authorizing four separate placarding systems, MTB has confused the primary issue of safety, placed unwarranted training burdens on an industry with a superb safety record, and subjected that industry and all others engaged in the production and transportation of hazardous materials to increased costs without increased benefits.

#### BUREAU OF EXPLOSIVES

Within the Association of American Railroads, the Bureau of Explosives is charged with the duty of advancing the railroad industry's superb safety record in the transportation of hazardous materials. The Bureau operates with a field force of 19 inspectors in the U.S. and Canada, a headquarters' professional staff of 8 and a laboratory staffed with three chemists.

The field force spends most of its time performing safety audit inspections on railroad facilities and at the production and shipping sites of the Bureau's over 500 member plants. During the course of a visit to, for instance, a member plant's tank car loading rack, the Bureau inspector will not only verify compliance with applicable DOT regulations, he or she will meet with the loading rack personnel to explain new regulations and to stress the importance of following the safest possible practices, whether or not codified in the regulations.

These visits also occur between the Bureau inspectors and railroad employees working in yards, stations, stores departments, and in train and engine service. Because of their special proximity to hazardous materials cars, a special tape/slide

show was developed by the Bureau of Explosives steering Committee for train and engine service employees. The program is designed to make it easier (and therefore safer) for operating employees to understand and follow the rules on inspecting, switching, handling, and train placement of cars of dangerous chemicals. Several major railroads used the format and content of the Bureau program to produce their own, in order to meet the unique circumstances—whether by reason of special carrier rules, yard layout, traffic patterns or geography and climate—on individual railroads.

Bureau inspectors also assist railroads in the mitigation of damage following derailments. Often the outcome of a discharge of hazardous commodities can be materially affected by the early steps taken to clean it up. Sometimes, the safety of the wreck clearing personnel can be greatly enhanced by a proper ordering of the priorities assigned to the rerailling, lading transfer or venting of the cars involved in the derailment. The Bureau personnel on scene at a derailment report to and work through the senior railroad official present. Nearly seventy five years of experience in helping the railroad industry and shippers of hazardous materials has proven the worth of this method of emergency response.

This has been a lengthy, but necessary, listing of the recent achievements of the railroad industry in order to rebut S. 960's premise that rail transportation is a clear and present danger. As a result of various research projects; the retrofit of 105, 112, and 114 tank cars; the training and inspection programs; and unprecedented capital spending, today's railroad accident will seldom turn into yesterday's catastrophe. Given these facts, S. 960 is a dinosaur.

Although industry has taken the lead role in making railroad transportation even safer, Congress still needs to carefully exercise its oversight of DOT in the area of hazardous materials. Two such problems—the proposal by the MTB to adopt the UN-Code and MTB's failure to make its regulations applicable to hazardous substances identified by the EPA under Superfund—have already been explained.

What is needed is a careful analysis of the total situation and of existing government studies and reports in order to direct scarce funds in ways that will provide the greatest payout in terms of improved safety. This is especially true in the case of S. 960 which would direct the Secretary to study training programs for enforcement of hazardous materials regulations, with the idea of creating new programs as well as delegating enforcement authority to the States. It would also direct studies of routing and prenotification systems which have already been found to be unfeasible. Finally, S. 960 would impose upon the transportation industry an additional Federal agency, FEMA, which has no experience in rail operations, but would be responsible for evaluating response programs and developing new ones.

The Office of Technology Assessment (OTA) reported to this Committee in 1978, that the existing Federal safety laws, taken as a whole, provide sufficient statutory authority to deal with the existing hazards of railroad operations. Virtually every authority sponsored by S. 960 is already vested in the Secretary under present law.

Additionally, the OTA found that many DOT regulations were put forward without adequate consideration of alternative responses or a clear understanding of the extent of the hazard. It is obvious that the proponents of S. 960 do not have a clear understanding of the likelihood of an extreme accident or alternative approaches already being used successfully. Their data on this subject—consisting as it does of the rapidly vanishing catastrophic release of hazardous materials—is irrelevant to S. 960's programs.

Finally, as the OTA stated, consideration must be given to the fact that the basis for all safety questions are trade-offs between the acceptable levels of risk, the benefit, and the costs. Critical to decisions about level of risk is a determination about the probability and severity of accidents. Serious rail accidents where a disastrous release of hazardous materials occur are virtually a thing of the past. The programs envisioned by S. 960 are not designed to prevent such accidents and can have no appreciable effect. Against these deficiencies must be weighed the additional costs these programs would impose on railroads.

A detailed look at S. 960 shows these defects more clearly.

Section 120 provides that the Secretary shall conduct a study and evaluation of training programs conducted by Federal, State, and local agencies and private organizations for personnel involved in compliance with and enforcement of the Secretary's hazardous materials regulations. If the study indicates deficiencies in existing programs, he is to develop appropriate programs to be provided to interested parties upon request. Also provided for is an information dissemination service to be maintained by the Secretary.

Section 121 takes this study and evaluation of training programs for personnel involved in enforcement activities one step further. It would authorize the Secretary to make grants to States for the development and implementation of programs for



the enforcement of Federal rules and standards, plus consistent State rules, regulations, standards, and orders. Then the State may submit a plan whereby the State agrees to adopt responsibility for enforcing Federal rules and consistent State regulations. A list of preliminary qualifications is included.

Obviously, what States hope to gain from these two provisions is prevention of the rare, but highly publicized, catastrophic release of hazardous materials. The railroad industry could not be in more agreement with this goal. However, these inspection proposals will not contribute to this end. Enforcement under HMTA is directed primarily to activities such as design specifications of manufacturers, shippers' packaging and loading practices, or placarding. As OTA found, this inspection program differs from other rail inspection programs because it is concerned with the involvement of hazardous materials in accidents and not with their causing railroad accidents. The program is intended to ensure that the hazardous materials do not compound the seriousness of the accident. The study by OTA indicated that there was no evidence to show that an increase in the level of inspections would produce an improvement in railroad safety.

Moreover, some training programs are difficult to standardize. If they are too generalized, they are unable to meet individual needs. This is particularly true at the shipper level where specific instructions are needed to properly load specific commodities. General standards may only confuse the loading personnel. Training is best handled by the individual industries, which should be permitted to use their own judgment as to what training programs best fit their needs.

There are two other concerns with States enforcing hazardous materials regulations. First, there is a constant need to ensure that State-employed inspectors meet Federal qualifications. Given the complex nature of the materials being regulated, the Federal rules are not always easy to understand. To permit enforcement without ensuring adequately trained inspectors who will not make mistakes would not advance safety, but deter it.

Second, State enforcement will breed redundancy as well as inconsistency. Theoretically, a particular shipment could be stopped at each State border for a new inspection which would be based on that State's interpretation of the standards. Differences in State programs would develop into barriers to interstate commerce. This must not be allowed to happen. We appreciate the concern of localities about the transportation of hazardous materials. It is understandable that such concern has prompted local cures through local legislation in the past, necessitating the exercise by DOT of its preemptive authority in favor of uniform national regulations. This is an intolerable situation. Local communities must be reminded that transportation of hazardous materials is a mobile, not stationary, problem. Widely differing requirements from place to place are likely to be counterproductive when taken together, leading to a more unsafe overall situation. An example of a well-intentioned local restriction which increases safety at other peoples' expense is routing restrictions, discussed *infra*.

While we do not believe that any additional study or inspection programs to enforce MTB regulations are warranted, any delegation should be limited to one specific State agency with state-wide responsibility. Enforcement authority should not include local agencies, as the result would be the exposure of industry to a confusing and dangerous proliferation of opinions.

Any such system should make it clear that Federal law and Federal regulations preempt State standards except to account for particular local emergencies. The current congressional and judicial policy for national uniformity is sound and should be continued. Safety would not be advanced if railroads were subjected to a variety of enforcement in 49 different judicial and administrative systems. Because of the difficulty in defining "consistent", and the resulting confusion to carriers and shippers, State laws or regulations should be limited to adoption of Federal rules and regulations.

It is absolutely essential to safe railroad operations that rules be unambiguous. The Federal regulations are complicated and it becomes more confusing when State regulations are added, jeopardizing industry training and inspection programs. The rules must apply uniformly, regardless of what State a train might be in. There can be no more unsafe arrangement than to introduce uncertainty into the interpretation of rules and the enforcement of the safety standards governing transportation.

Another problem to be avoided in any delegation scheme is the elimination of direction or oversight by the Secretary if States are permitted to assess penalties. The HMTA provides not only for substantial civil penalties of up to \$10,000 per day, but also for criminal sanctions. Allowing States to pursue their own paths in this area would defeat the concept of a national rail system, especially for carriers in weak financial condition. If the States insist upon a role in inspecting, the partner-

ship arrangement provided for in the Federal Railroad Safety Act should be maintained.

Section 122 directs the Secretary to study routing of hazardous materials. If the Secretary finds that regulation is not needed, he must report to Congress why such regulations are not necessary. If the Secretary finds such regulations necessary, obviously he must then issue rules.

While it may not be intended by the authors of S. 960, section 122 appears to be a directive requiring the Secretary to adopt routing regulations by requiring a report only in the instance of a negative finding. However, Congress has not made a finding that routing regulations are either necessary or beneficial and care must be taken to avoid any uncertainty as to the responsibility of the Secretary.

The railroad industry is adamantly opposed to routing rail shipments of hazardous materials around population centers. Routing of trains is a decision made by railroad and shipper managements based upon many factors, including safety. In our opinion, current routing reflects the safest routing. Moreover, the Secretary has already studied this question under his existing authority and has rejected the concept.

The Transportation Systems Center under the direction of DOT's Research and Special Programs Administration issued a draft study last year analyzing a national policy for routing hazardous materials on railroads. One part of the analysis consists of estimating 1977 hazardous materials flow patterns on a national map and altering those patterns to avoid populated areas. National average impacts were then computed with and without upgrading the secondary track which is almost always involved in a rerouting scheme. The other part of the analysis involves a case study of a localized area where alternative routings are possible. This methodology will be extended to identify specific sites across the country where a change in routing appears to be advantageous.

The report found that a blanket national materials routing policy, based solely on the avoidance of populated areas without significant and costly track upgrading on alternative routes, would be counterproductive.

It was estimated from historical statistics that the expected number of casualties (deaths and injuries requiring medical attention) in 1977 would have increased by nearly 20 percent if shipments had been rerouted within each railroad's system, while maintaining the historical junctions between railroads. Even if new junctions had been considered, thus implying a change in railroad market shares, there would have been a 10 percent increase in casualties.

These aggregate national impacts arose because the advantage of reducing public exposure to hazardous materials shipments was outweighed by the disadvantages of forcing traffic onto track not maintained for volume shipments with longer trip lengths. If a population avoidance policy had been accompanied by the upgrading of all Class 1 track involved to Class 2 standards, there would have been a reduction in casualties. This reduction would have been approximately 4 percent in 1977 if historical junctions had been maintained and 23 percent if new junctions had been permitted. If all Class 1 and Class 2 track had been upgraded to Class 3 standards, there would have been about a 9 percent decrease in 1977 if historical junctions had been maintained and a 28 percent decrease if new junctions had been permitted.

Conclusions have yet to be reached concerning the associated costs (excluding track upgrading) of rerouting hazardous materials shipments, although a report is expected in the next few weeks on these costs. A rough estimate of the cost of upgrading the approximately 50,000 miles of Class 1 track with a 10 mile per hour speed limit to Class 2 track with a 25 mile per hour speed limit is about \$75,000 per mile if the rail is not replaced and about \$150,000 per mile using relay rail.

The second part of section 122 contains a provision requiring the Secretary to prepare a report on a prenotification system which would inform State or local governments in advance of the timing, nature, and routing of hazardous materials shipments through their jurisdictions. That such a proposal is given serious consideration is of grave concern. It displays a distinct lack of understanding of the needs of State agencies and the realities of railroad operations.

Local agencies cannot really want prenotification of every single hazardous material passing through their town. First, it is not feasible. Second, it will not help local officials to effectively respond in the event of an incident involving hazardous materials. It is beyond comprehension how a local government could use this information.

Administratively, prenotification would be impossible for both the carrier and the local government. In many areas, hundreds of hazardous material shipments would pass through every hour, every day. It is unrealistic to think a carrier could supply or a local government digest this amount of information.

There is no simple method of supplying advance notice because on through movements, or even at initial delivery, the carriers themselves do not know what material will be received. Requiring advance notification in those cases would be a nightmare. Entire trains would be held at the point of interchange or in yards pending notification, creating horrendous backups. Such delays are counterproductive and conflict with better-reasoned current regulation which prohibit unnecessary delay of hazardous material cars.

There is a superior approach to the communities' concern—preplanning. The odds are so low that a derailment will even occur, let alone result in a spill of a hazardous substance, that communities should concentrate on plans compatible with many types of emergency situations.

If hazardous materials are involved in an accident, identification of the commodity can be quickly made through the waybills which are required to identify hazardous materials. The waybills must contain the proper shipping name, the hazard class, and the UN identification number. After identification, appropriate experts such as CHEMTREC can be contacted on a moment's notice. All this negates the need to collect interminable paper. Neither a prenotification system nor the establishment of a complex response system which officials would rarely, if ever, use, and as a result have trouble remembering, would benefit local officials responsible for emergency response.

Sections 123, 124, and 125 would authorize the Director of the Federal Emergency Management Agency, also known as FEMA, to study and evaluate training programs used by Federal, State, and local governments, and private organizations for response to incidents involving hazardous materials. If the Director finds these training programs inadequate, he is to develop appropriate programs which will be provided upon request to training agencies.

The Director will also have the authority to develop coordinated emergency response by making grants to State and local governments to assess present response capabilities, including manpower, equipment, and assigning lead responsibility. Finally, the Director is to conduct research and development activities to achieve effective emergency response capabilities.

Again, additional training programs developed by FEMA are not necessary and there is no reason to believe that they would be cost effective. We have no objection to further developing emergency response plans. While effective response to transportation accidents involving hazardous materials is very important, DOT, the rail and chemical industries constantly evaluate and improve programs already in place. Together they have developed a coordinated approach to a number of problems. A new agency's involvement is not necessary.

One of the most vexing is the question, "Who's in charge here?" Several entities typically present themselves and, depending upon such factors as the personality of the individuals involved and the state of knowledge each believes the other has, a central focus may emerge which may or may not represent the best solution.

The three most common entities on site—at least at a derailment—are the railroad (including, often, a wreck clearing contractor, several representatives of shippers who have responded to the request of the railroad and the Bureau of Explosives district inspector augmented by such of the headquarter's professionals as are appropriate and available), the local emergency response forces (typically, the fire department, but often the Civil Defense forces and, increasingly, the state police) and the Federal on-scene-coordinator.

The railroad's role as a common carrier means that, at least initially, it is responsible for the cars and commodities damaged. The unique legal status does not determine third-party rights or liabilities and it exists as a means of effecting the restoration of vital transportation services. Any change in this role must be seriously examined in order not to disrupt the nation's rail network.

The role of the emergency response forces is primarily one of the protection of lives and adjacent property. They cannot be expected to have the sophisticated knowledge of chemistry necessary to effect a complete clean up, nor can they be expected to be aware of the multiple differences between types of rail cars and their cargoes.

The Federal on-scene coordinator is an official originally predesignated under the Clean Water Act to focus and coordinate the Federal response to the scene. In the event of the threat of serious environmental damage, and if the railroad for some unknown reason takes no action in mitigation, the on-scene coordinator has certain powers to "take over" and apply Federal resources to reduce the threat.

Experience has shown—and remember that, with a good accident record, there has not been (fortunately) an overwhelming amount of experience—that most often these three units with different training and different missions achieve a consensus

approach to the handling of the situation and, with no particular drama, the damage is cleared and the transportation services restored.

The railroad industry is unanimous in the opinion that, in the event of conflict about "Who's in charge?", the best single person is usually the senior railroad official present. First, this person is intimately familiar with the railroad environment and knows where to go to ensure himself of the particular expertise needed. Second, the railroad will have primary fiscal and legal responsibility and so has the greatest incentive to take the right actions and make the right decisions about clean up and mitigation. Third, history shows that when anyone else steps in, optimal decisions are not made. On a more positive side, experience also demonstrates that senior railroad officials have almost always made the right decisions.

The railroads and the communities they serve have, by and large, enjoyed superb cooperation during emergency situations from the shippers of hazardous materials. When a train carrying chemicals goes on the ground, the railroads have been able to call the shippers involved—even in the middle of the night—and to receive advice and on-scene response when necessary.

No entity better typifies this than the chemical industry's CHEMTREC service. The Chemical Transportation Emergency Center is staffed by trained communicators 24 hours a day. When a call is placed to the CHEMTREC 800 number (800-424-9300), the person who answers can supply information on particular commodities and can contact the shipper to relay additional information. For a transportation emergency involving chemicals, CHEMTREC can bring to bear a host of talent and expertise. CHEMTREC's services are so reliable and its lines of communications so fast that a number of railroads even use it to contact the Bureau of Explosives—thus saving a harried dispatcher for communications directly with the derailment site.

Other than the Bureau, CHEMTREC can trigger a response from organizations like the Chloreps teams. The chlorine producers, realizing that they were shipping one of the deadliest and yet one of the most vital of the gases, created Chloreps to provide regional "go-teams" who could respond to chlorine emergencies regardless of the identity of the producer/shipper. Other manufacturing groups, such as the producers of vinyl chloride, have also established "go-teams".

If one were truly interested in helping those people who respond to transportation incidents, liability limitations would be considered. In today's litigation-prone society there is some fear that voluntary actions—like CHEMTREC, Chloreps or even the on-scene response by an individual shipper—could lead to potential legal liability. The current costs of litigation are so astronomical that even being named as one of the defendants in a law suit is a severe economic burden.

One way to encourage all concerned—shippers, carriers, CHEMTREC, the Bureau of Explosives and others—to continue to provide their very beneficial services is to grant such volunteers protection from litigation. Often termed "Good Samaritan Laws," there are plans and model acts that should be considered for adoption on a nationwide basis.

S. 960, however, only proposes to add another layer of bureaucracy. While the Director of FEMA is supposed to coordinate his efforts with DOT, it is FEMA which is given the major role. Generally, the railroad industry supports increased coordination between government agencies, but we feel very strongly that DOT should remain the responsible agency in the area of train operations. There is no reason to inject an agency such as FEMA into a highly specialized field in which DOT, not FEMA, has the experience and knowledge. While FEMA may have experience in emergency preparedness and response such as emergency medical services and housing victims, it does not have any expertise in railroad operations. Any study should be conducted by DOT with FEMA rendering appropriate assistance upon need. The railroad industry is appalled at the idea that even one more government body will be authorized to interfere in the business of operating trains.

The railroad industry has demonstrated a remarkable ability to bring about a safety record that rightfully inspires pride and it has even more importantly demonstrated an ability to keep improving on that record no matter how good it gets. As long as dangerous chemicals are vital to America's economy, there will be a hazardous materials concern. The members of the Association of American Railroads believe that now is the appropriate time for that concern to mature from a crisis atmosphere to one of recognition of the worth of what has been, is being and will be done by the shippers and carriers of these materials.

#### CONCLUSION

I would like to end my presentation as I began it, by stating that the railroad industry is a safe industry. There are areas which can be improved, and we are working to improve them. But we are not looking at a problem which can be

addressed in a sweeping general way by a new law such as S. 960. Rather, it is a matter of addressing specifically each of the disparate causes of rail accidents and applying to them the appropriate specially-tailored remedy.

Senator DANFORTH. The next witness is William G. Kahler, chairman, Hazardous Materials Advisory Council.

**STATEMENT OF WILLIAM G. KAHLER, CHAIRMAN, HAZARDOUS MATERIALS ADVISORY COUNCIL**

Mr. KAHLER. Thank you, Mr. Chairman, Senator Gorton. I am William G. Kahler, and I'm here today in my capacity as chairman of the Hazardous Materials Advisory Council, which I shall refer to as HMAC. HMAC appreciates this opportunity to present its views on S. 960.

HMAC is a nonprofit organization with an office in Washington, D.C. Its membership consists of approximately 260 corporations, firms and associations involved in the shipment and transportation of hazardous materials and hazardous wastes which are subject to the provisions of the Hazardous Materials Transportation Act of 1974, the Resource Conservation and Recovery Act, and similar Federal laws. HMAC is the only national organization devoted to promoting safety in the domestic and international transportation of hazardous materials which represents all modes of transportation, shippers of varying size, container manufacturers, and carrier and shipper associations.

HMAC believes that S. 960 reflects a responsible and constructive effort to accommodate the legitimate interests of State and local governments in connection with hazardous materials transportation. Appropriately, the bill also acknowledges the importance of such transportation to the Nation's commerce. Nevertheless, HMAC is concerned with the failure of S. 960 to clearly and unequivocally deal with the continuing problem of proliferating, and often conflicting, regulations at State and local levels. Accordingly, HMAC regretfully finds that it cannot support the legislation in its present form.

If enacted, S. 960 would make available Federal funds to establish, under Federal leadership, programs for regulatory enforcement by local personnel and for assisting in State, local and regional response to hazardous materials emergencies. Such programs, we believe, would be of great benefit to State and local authorities in meeting the responsibilities imposed upon them for the safety and security of persons and property within their jurisdictions.

In our view, however, such programs would be less than effective if regulatory standards are permitted to vary from State to State, county to county, and city to city. S. 960, therefore, should clearly provide for uniformity among Federal, State and local rules and regulations, and rather than the equivocal standard of consistency which appears throughout the bill. Indeed, experience has demonstrated that the concept of consistent local regulation, as now incorporated in section 112 of the Hazardous Materials Transportation Act, has been an inadequate and unreliable guide to the proper relationship between Federal and local authority with respect to the regulation of hazardous materials transportation.

It is important to emphasize that HMAC does not, at this time, seek to revise section 112 (although we would certainly applaud any legislative effort to alleviate the frustrating impediments to

commerce which that section has encouraged). On the other hand, we believe that any State desiring to participate in the Federal programs which S. 960 would create should be prepared to adopt Federal rules, regulations, and standards. Continued proliferation of State and local regulations would undoubtedly dilute the beneficial effects of such programs by impairing uniform comprehension of regulatory requirements, thereby frustrating compliance and thwarting the development of quality training addressed to the essential elements of transport safety, emergency response and environmental cleanup.

For the reasons which I have stated, HMAC respectfully urges the committee to modify the provisions of S. 960 to make clear the requirement for uniform regulation. Although we have prepared for that purpose specific revisions to the language of the bill, I would prefer not to impose on the committee's time by reading such revisions into the record. With your permission, I will include them in part A of the attachment to this statement which I will submit to the committee's staff.

Because of the overwhelming importance of regulatory uniformity, I have elected in this statement to concentrate on that issue. HMAC, however, has a number of additional concerns with the provisions of S. 960 which we would respectfully offer for consideration by this committee. Again, rather than burden your time, we will include such observations in part B of the attachment.

I wish to thank the committee, on behalf of myself and HMAC, for your attention to these remarks. I would be happy to try to answer any questions you may have.

[The attachment follows:]

#### ATTACHMENT

##### PART A—PROPOSED REVISIONS PERTAINING TO UNIFORMITY

- (1) In Sections 2(a)(5) and 2(b)(1), change "greater consistency" to "uniformity".
- (2) In Sections 121(a) and 121(b)(1) of Subtitle B, place a period after "title" and delete "and consistent State rules, regulations, standards and orders".
- (3) In Section 121(b)(1)(E) of Subtitle B, add "uniform enforcement practices, procedures and penalties".
- (4) In Section 121(c) of Subtitle B, change the first portion of the second sentence to read as follows:

*Whenever the Secretary finds, after affording due notice and opportunity for comment, that a State plan previously approved is not being followed or that it has become inadequate to assure uniform enforcement of rules . . . .*

(Changes or additions are underlined.)

- (5) In Section 121(d) of Subtitle B, place a period after "title" (in the first sentence) and delete "and consistent State rules, regulations, standards and orders".

##### PART B—ADDITIONAL OBSERVATIONS

- (1) In Section 3, change the proposed new paragraph (3) of Section 103 by deleting therefrom "or a transportation-related function such as loading, unloading, packaging or stowage". The definition of "transportation" in existing Section 103(6) already includes such "transportation-related" functions, with the exception of "packaging". The inclusion of "packaging" would unduly broaden a proper definition of the term, "incident", and could be improperly construed to broaden the definition of "transportation" for purposes of the Act. Since packaging normally is performed at a fixed facility and is not directly or necessarily related to the actual movement of goods, it should not be construed as a "transportation-related" function for such purposes.
- (2) In Section 120(c) of Subtitle B, delete the last sentence. The Secretary already has the requisite authority and, due to its vagueness and uncertainty, this sentence could be improperly construed to unduly broaden such authority.

(3) In Section 121(b)(1) of Subtitle B, delete paragraph (D) and substitute therefor the following:

Authorize any officer, employee or agent to enter upon, inspect, and examine, at such reasonable times and in such reasonable manner as may be established and required by the Secretary, the records and properties of persons to the extent such records and properties relate to the facilities or operations specified in Section 109(c) (1) and (2).

Paragraph (D), as presently written, is excessively vague and should be conformed to Section 109(c) of the Act to assure that State plans do not permit the exercise of State or local power in excess of Federal authority.

(4) In Section 122(a)(1) of Subtitle B, add a provision for consultation by the Secretary with private interests and organizations to the same extent as provided in Section 122(b)(2) of Subtitle B. Additionally, in the first sentence of Section 122(a)(1), delete the word, "interstate", since the definition of "commerce" at present Section 103 (1) is adequate.

(5) In Section 122(a)(2) of Subtitle B, delete the term, "and modes". There is no reason to permit State or local governments to select one mode of transportation as preferred over any other. Such decisions could have severe economic consequences and should not be left to the inherently limited perspective of local jurisdictions.

(6) In Section 122(b)(1) of Subtitle B, add a provision requiring the Secretary to consider the number of shipments, vehicles, origins, destinations, and containers, the variety of alternative routes via alternative modes, and the economic and administrative burdens of providing and handling advance notifications to States and localities. See Senator Cannon's remarks upon introduction of S.960 (Congressional Record, April 9, 1981, P. S3784).

(7) In Section 122(c) of Subtitle B, add a proviso that participation in any demonstration projects shall be voluntary. This is necessary to prevent mandatory participation, without due process, in programs which, by definition, are experimental.

(8) Delete Section 123 of Subtitle B and combine the provisions thereof with Section 120 of Subtitle B. Separation of the studies pertaining to prevention and response is duplicative and inefficient.

(9) In Section 124 of Subtitle B, the authority to make grants for emergency planning should be vested in the Secretary of Transportation, who would be authorized under Section 121 of Subtitle B to make grants for enforcement programs. The dispersion of such authority to different Federal agencies is likely to be duplicative and wasteful. By requiring the Secretary to consult with FEMA, the expertise of the latter could be made available to DOT. Additionally, Section 124(c) requires the Director of FEMA to promote the establishment of regional emergency response programs, while Section 120(d) requires the Secretary to encourage establishment of regional training centers.

There is no assurance, however, that such promotions would be coordinated, or even that the regions would be the same in each case. (10) In Section 125 of Subtitle B, the authority to conduct research and development activities should be vested in the Secretary, for reasons similar to those specified in (9), above. Additionally, Section 125(3) should be deleted because the Secretary would have sufficient authority under Section 120(c), as modified in accordance with (2) and (8), above.

(11) In Section 126 of Subtitle B, make such changes as may be appropriate to accommodate the changes proposed at (8), (9) and (10) above.

Senator DANFORTH. Senator Gorton.

Senator GORTON. No questions.

Senator DANFORTH. I would like to ask you a factual question, not a legal question. Let me begin it this way. The transportation of hazardous material, is that normally purely an intrastate activity or is it something that as a matter of course is interstate?

Mr. KAHLER. I think the majority of hazardous materials transportation is in interstate commerce, although there certainly is a sufficient amount of intrastate.

Senator DANFORTH. Is local regulation of hazardous waste transportation, your factual understanding, a burden on interstate commerce?

Mr. KAHLER. We have seen numerous cases where communities have their own particular route. This does provide an impediment to interstate commerce. This is why we believe that the bill, S. 960, if it were restricted to uniformity with Federal requirements would

allow local and State persons to participate, yet at the same time, eliminate or reduce this problem we are currently experiencing.

Senator DANFORTH. Is it a problem now?

Mr. KAHLER. It is a problem now. It is continuing to grow.

Senator DANFORTH. Would you describe the problem a little more fully?

Mr. KAHLER. Well, the problem that we are seeing is that communities tend to address the transportation of hazardous materials without an adequate understanding of the background that has gone into making the Federal regulations. They tend to come up with their own restrictions, in some cases, outright bans as mentioned earlier. This can result in unsafe conditions. We in the transportation industry are quite concerned about this.

Senator DANFORTH. Is it common or uncommon for local communities or State governments to impose requirements that are unique, or that are peculiar to that particular political subdivision or State?

Mr. KAHLER. I think it's something that is growing. It is at a relatively low level now, but it is on the increase. And, yes, we are seeing where they tend to, as Mr. Wight pointed out, I think it was Mr. Wight, shipments tend to be directed from one community into another community, and cause problems in the neighboring community without due regard for their needs.

Senator DANFORTH. So you say that it is not particularly widespread, but it is a growing phenomenon?

Mr. KAHLER. Yes.

Senator DANFORTH. That a community, a municipality—

Mr. KAHLER. Municipality.

Senator DANFORTH [continuing]. Would establish its own peculiar requirements, ordinances, pertaining to the transportation of hazardous materials?

Mr. KAHLER. Yes; municipality, county.

Senator DANFORTH. It is your view as a matter of fact that when it does that, it does have an interstate commerce impact?

Mr. KAHLER. Yes; in most cases I would. Not all cases because there are certain communities that may be out of the interstate routings.

Senator DANFORTH. Would you say that the climate for making governmental decisions as to hazardous materials transportation in a local community is generally a climate of rationality, or is it a climate that often is very heavily emotional?

Mr. KAHLER. I think it is inclined to be heavily emotional.

Senator DANFORTH. And the people who make the decisions are city councilmen?

Mr. KAHLER. City councilmen, representatives of the fire department or police department, or whoever the safety officials might be, may not have an adequate understanding of the transportation of hazardous materials, and may have built the system that we have today.

Senator DANFORTH. When Mr. Wight was here from New Hampshire, he discussed the very public demonstrations relating to nuclear energy powerplants in New Hampshire. And how terribly emotional and heated that subject can be.



Last year when we were dealing with the question of cleanup of hazardous waste sites, the so-called superfund bill, how very public and I think there was a cover story in, I believe Time, maybe Newsweek, on the subject. And last October I was in Macon, Mo., and the great controversy in that community at that time was hazardous waste disposal.

When the issue comes alive in a community, it comes alive in a very volatile way. Would you agree with that?

Mr. KAHLER. Yes; I would say so.

Senator DANFORTH. And it would be possible under those circumstances for, say, city councilmen or nonelected officials, but who are appointed by elected officials, to make decisions with respect to hazardous waste material which are made in the heat of the public passion and made in a way which would create variations from one community to another and would have an effect on interstate commerce, is that your view?

Mr. KAHLER. Yes.

Senator DANFORTH. Thank you very much.

Mr. KAHLER. Thank you, sir.

Senator DANFORTH. The next witness is Albert B. Rosenbaum, III, assistant managing director, National Tank Truck Carriers.

**STATEMENT OF ALBERT B. ROSENBAUM, III, ASSISTANT MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS, WASHINGTON, D.C.**

Mr. ROSENBAUM. Thank you, Mr. Chairman. I am Al Rosenbaum, assistant managing director of National Tank Truck Carrier.

I am here today in place of Clifford Harrison, who is unable to be present because he is appearing in a court in Boston in a case involving local hazardous material regulations.

We have prepared a full written statement. With your permission, I would like that put in the record and I will summarize the statement for the benefit of time.

Our organization is a national trade association. Our 225 members transport a variety of commodities in bulk, in tank vehicles. Since most of the commodities we haul fall in the category of hazardous materials, our interest in S. 960 is substantial.

Initially, we wish to note that the proposed amendments are noted as the beginning of a much needed refinement of existing law. We urge the committee to keep in mind that the transportation community views the HMTA as one piece of a complicated legislative puzzle in that its regulations must be reconciled with other pieces of Federal legislation.

Today we will comment on proposed amendments and suggest additional areas where we believe legislative correction and direction is needed.

Mr. Chairman, we wish to note that there are areas of hazardous materials transportation safety not presently contemplated in S. 960 which if added would make significant contributions to more effective Federal and State local enforcement.

The first two areas are simple. One, we ask that the present section of HMTA dealing with registration be changed from permissive to mandatory language. We believe the Secretary should be directed by Congress to compile a master of all carriers of hazard-

ous materials, private for hire interstate, intrastate, regardless of mode.

Presently, the enforcers are referees in a game where they don't know who the players are.

Next, we ask that the act be amended to require motor carriers of hazardous materials to indentify each vehicle with their name, city, and State. Again, enforcers must know with whom they are dealing.

A third addition is not simple nor noncontroversial. What we seek is a truly workable section dealing with Federal preemption. Our industry knows firsthand that the present section 112 of HMTA just doesn't work. Our association is presently involved in three different Federal courts in Boston, the State of Rhode Island, and New York City, in protracted litigation involving State and local tank truck rules.

We believe these rules are inconsistent with the Federal regulations and are a burden on interstate commerce. These local statutes run the gamut from total bans on transportation to special signs and placards/all redundant and/or different from Federal rules.

Unfortunately, it would appear that the action being taken by the three jurisdictions I have noted is just the beginning. Numerous other States and municipalities are considering their own hazardous materials rules.

However, the ordinances for the city of Boston are perhaps classic. In that city, present rules ban all through traffic of trucks laden with certain amounts of six classes of hazardous materials.

A 6 a.m. to 8 p.m. ban exists, and violators are subject to civil and criminal penalties, but for purchasing \$600 worth of permits from the city, a carrier may conduct business as usual.

Mr. Chairman, it's not our intention to demean the proclivities of the city fathers of Boston or anyone else. We recognize and appreciate the fact that local political leaders first feel the brunt of anxiety prompted by hazardous materials in their community and trucks bear the burden of the failures of all modes involved in this type of commerce.

It must be recognized that these individual actions create impossible burdens on shippers and carriers which are essential to our lifestyle and productivity. Hazardous materials transportation is national, not local; interstate, not limited, because these products are used to make nearly everything we eat or use.

Generally speaking, it has been our experience that promoters of local regulations are acting without general knowledge of the scope and efficacy of the Federal rules, and out of frustration borne of the reality of minimal Federal enforcement efforts.

This bill calling for increased State enforcement efforts and properly trained personnel would only alleviate half the problem as it now stands. For the transportation sector to be able to operate efficiently in compliance with rules, uniformity must be established.

It's not enough to depend on determinations of consistency, since that term is subject to the whim and fancy of every echelon of official from city official to Federal judges.

We ask the bill be based on three principles. One, statutory presumption that Federal regulations have dominance.

Two, powers granted to the Secretary shall not be abridged by State and local officials, and that permits, fees, et cetera, are unduly burdensome.

Three, that the burden for obtaining waivers or exemptions from Federal regulations for communities with truly unique situations be placed on the State and local jurisdiction and that such waiver be obtained prior to the passage or enactment of the local law or ordinance involved.

Mr. Chairman, there are an estimated 23,000 communities in the United States. I am sure I don't have to detail the potential chaos that would occur should these communities each impose their own regulatory barrier.

We view as most significant in these proposals the change embodied in S. 960 and shift from enforcement responsibility for hazardous materials carriers from the Federal DOT to the States. We support this proposal.

Presently there are two main entities within DOT exercising oversight. The MTB, which you have heard from today, and Bureau of Motor Carrier Safety.

It's important to recognize that MTB has little or no enforcement capability while BMCS has only about 170 people in the field to check compliance of millions of trucks and thousands of private carriers, for-hire carriers, and shippers of hazardous materials.

It's apparent that the Congress believes as we do that the bedrock of a hazardous materials transportation safety program is responsible and responsive enforcement programs.

Also, apparently Congress agrees we must utilize existing resources in the most productive manner possible. In point of fact enforcement resources of DOT's Bureau of Motor Carrier Safety are so slim that the Bureau has acknowledged the existing policy of nonendorsement against intrastate carriers even though intrastate trucks have a significant potential for violation and accident as does the interstate operator.

Presently every State, county, and larger cities have in place police and other enforcement personnel who, with a modicum of training in the Federal hazardous materials regulation could replace or augment over-the-road Federal enforcement on a daily basis.

We respectfully commend to this committee the activities of the State of Illinois in this area. We believe Illinois demonstrates that a well-planned well-coordinated State program centered on trained State police holds much promise.

We wish to stress that we are not advocating complete withdrawal of the Federal element from the enforcement process. We recognize that a truly bona fide enforcement effort must cross State lines and political jurisdictions. DOT's, BMCS already has in place data processing capability to enable their staff to compare performance of thousands of motor carriers.

If you included the caveat that enforcement records be afforded to DOT for processing, a data base could be developed. Thus we would envision that the future role of BMC be one of data collection, review, and regulatory refinement on an as needed basis.

Of course, we are not blind to the fact that the task of training enforcement personnel at the State level will take money, nor are we insensitive to the current temperament regarding budget outlays.

We believe however, that the task could be completed with minimal expense using existing facilities and programs mentioned already this morning.

Next we come to the topic of routing and prenotification as outlined in section 122-A of the bill. We have no objection to any study of this nature. In fact, we believe the committee would be pleasantly surprised by the amount of work DOT has already completed.

We must admit reservations concerning subparagraph (a)(3)(A). We are concerned that forcing a bureaucratic determination as to whether or not any particular mode is, de facto, unacceptable for transportation of hazardous materials will prompt little more than political cat fights.

For example, let's assume that a particular Secretary or modal administrator within DOT was chosen from the ranks of the trucking, rail, barge, or pipeline industries. Such being the case, every determination called for in this section would be controversial and suspect to say the least.

The very basis of such determination would be open to attack since each and every competing mode can produce volumes of statistics proving we are the safest as we have already heard this morning.

We don't think that this section offers much as far as new information and urge that it be stricken.

Next, subsection (b)(1). It deals with prenotification. Frankly, it strikes terror into our hearts. We are cognizant of the fact that this subsection only calls for the Secretary to make a feasibility report.

However, we can't overlook the political and social ramifications. Prenotification is much more complicated and much more difficult to deal with because you end up with a phone-a-thon system where each move involves a phone call to every jurisdiction and subdivision along your route of travel.

Many of our larger carriers have over 2,000 dispatches per day. So it's quite a difficult situation.

Thank you for the opportunity to be here today. I will be happy to attempt to answer your questions.

Senator DANFORTH. As I understand it, your view is that there is a problem of differing local and State regulations on the transportation of hazardous materials?

Mr. ROSENBAUM. Yes, sir, to say the least. We think that is a serious problem.

Senator DANFORTH. Is it growing?

Mr. ROSENBAUM. It's growing. In the last 2 years, we have gone from one court to another. We have come upon (literally) over 20 localities who have put in hazardous materials regulations for transportation by truck.

Some of them come out of strictly hazardous materials in the classical sense that you see from DOT's list in 49 CFR 172-101. Others come out of the hazardous waste rules or hazardous sub-

stance rules or nuclear rules, like those talked about this morning, in Georgia.

So it's just not one source that these rules come from and it is a growing problem.

Senator DANFORTH. Why isn't this, though, a local issue? Why should this be viewed as an interstate or national issue? Certainly communities are free to protect themselves to the best of their ability, aren't they?

Mr. ROSENBAUM. Yes, sir. Except where it would be a burden on interstate commerce. When you talk about local rules and local routings, what you do is basically transfer one man's risk to another.

Boston's rules would push, as an example, the hazardous material routes out of Boston. I think as it goes from Boston further west, each community would eventually have their own rules if the trend continues.

So we would be running trucks to get from the Northeast to New York through New Hampshire to Quebec, Ontario, Ohio, and back around that way, to please everybody.

That is just simply impossible. Moreover, the risks increase. Every mile a truck is on the road increases its risk for accident, either on its own or with the other traffic it meets.

Senator DANFORTH. You are saying hazardous material is going to be transported anyhow, and that to the extent one community places limitations on how it's done, that would have an effect on transportation through other communities?

Mr. ROSENBAUM. Until such time as the Nation goes back to Mr. Jefferson's original idea of an agrarian economy, yes.

Senator DANFORTH. It's my understanding that you also say that the Federal Government should preempt the field, correct?

Mr. ROSENBAUM. We think that the Federal Government should write the rules that govern transportation of hazardous materials throughout the 48 continental United States. We think that they should write the rules involving international transportation of hazardous materials.

We think the State should be trained and given the funds to put its own enforcement people on the road. Once the rules are written let DOT rewrite them but let the States enforce them.

It's an unworkable situation we are currently facing.

Senator DANFORTH. You think the States should be the sort of enforcement arm of the Federal Government?

Mr. ROSENBAUM. Yes, sir, we have seen it in Illinois and we think they have done a fine job. They have sent their troopers to the training school in Oklahoma City. They are reasonable people.

They make mistakes and admit it in the training period. They have done a fine responsive job in cutting down the bad actors on the highway, and there is no question about it some trucks are bad actors.

Senator DANFORTH. I am sure that the highway patrol people throughout the country are very responsible and very competent. But it would be unusual, wouldn't it, to put State law enforcement officials in charge of enforcing Federal requirements, I mean even with respect to the 55 mile an hour speed limit, which really is a Federal rule? At least we used the backdoor route of getting there.

That is, the State government legislatures themselves legislate it, although they were forced to do it by the Federal Government.

But when you say that the Congress is going to pass the statute, and a Federal department is going to establish the regulations pursuant to the legislation, and the Federal Government wouldn't do the enforcement, it's going to be done by the local law enforcement people, maybe there is some precedent that I haven't thought of. But it strikes me as being quite unusual.

Mr. ROSENBAUM. I don't think it really is unusual. There are people in the room who can give you the exact number but there are a large number of States, more than half of them, that have already adopted 49 CFR 170 to 178 as their State hazardous materials rules. So they would be enforcing regulations they have already adopted in their State codes.

Senator DANFORTH. What would happen if the State government said, well, our priority is not hazardous waste. Our priority is jaywalking.

Mr. ROSENBAUM. What would happen?

Senator DANFORTH. We are going to use all of our law enforcement officers to enforce jaywalking.

Mr. ROSENBAUM. I think you would see a lot of jaywalkers in jail. Unfortunately, that is one of the proclivities of States. They tend to do what they think is important to them. Maybe that is what they should do. However, if they have laws on the books, I think they are required to enforce them.

Senator DANFORTH. Well, it's true in all law enforcement. The law enforcement officials set their own priorities as to what laws should be enforced heavily and what should be relatively ignored. But you say that would be just the breaks of the game.

Mr. ROSENBAUM. Well, currently in attempting enforcement of the 55 mile an hour speed limit I know the Federal Government has used the carrot and stick approach of Federal highway funds. Maybe something like that could be worked out from wherever funds come from to train the States.

Senator DANFORTH. Just one other question. Are tank truck carriers normally insured for results of a hazardous waste leakage or spills or disaster?

Mr. ROSENBAUM. Our carriers all carry insurance, of our 225 members, we did a survey 18 months ago prior to the passage of the Motor Carrier Act, which indicated that every one of our carriers had at least \$5 million worth of insurance and many were up to \$60 and \$75 million level of insurance with layered coverages, and either primary or self-protection insurance.

Senator DANFORTH. Is there an effect on rates, and also the availability of insurance? Is there an effect on that of what precautions, safety precautions are in fact followed by the carrier?

Mr. ROSENBAUM. Yes, and there is also an effect on the insurance cost to the carrier, because in the trucking industry it is common for a motor carrier to operate with its insurance on a retroactive basis in that you pay a fee up front, say, on January 1 of the year, which is, let's say, \$10,000. At the end of the year, on January 1 of the next year, the insurance company comes back and looks at you. If you had a good safety year, you get the money back. If you had a

bad safety year, you lose all your \$10,000 in this example, and the next year it will be \$20,000.

So there is a definite monetary influence right off the bottom line for you to operate safely. Moreover the higher insurance levels that you have, the more often you have insurance company inspectors monitoring your programs. That is another incentive.

Senator DANFORTH. Does that in fact happen?

Mr. ROSENBAUM. Yes.

Senator DANFORTH. They make suggestions as to how to make the process safer?

Mr. ROSENBAUM. Sometimes it's more than suggestion. Sometimes they tell you to do it or they will take away your coverage. If a company is having problems, they come in and help do a safety review and basically audit the program. When an audit like this occurs, everybody in the safety shop and company is on their toes.

When it is all done, they get the word yes or no on the next year's coverage or the next year's premium. When you're operating on incentives within the company, in management, you have that incentive to do a good job.

Senator DANFORTH. Do you think the Federal or State laws or local ordinances regulating hazardous materials transportation enhance the safety of the American public?

Mr. ROSENBAUM. Federal laws?

Senator DANFORTH. Any, Federal, State, local. Do you think we are safe because of these laws or do you think it is pretty well taken care of by the requirements of the insurance companies?

Mr. ROSENBAUM. Insurance companies are important, but the Federal hazardous materials regulations were developed over years and years of experience of operating trucks on the road. For instance, in the tank truck business, you have DOT specification vehicles. An MC-331 tank is the result of 30 years of experience, and it is quite a good vehicle. Local laws can't make a 331 any better. Local laws can't make the inherent flexibility or adaptability of the vehicle to a certain situation any better.

I think we are better off with Federal laws than we are with just strictly insurance overview. I think we are better off with the experience not only developed in developing the laws but also in the way the current regulatory structure works, where an idea is put before the country, and you have an opportunity to comment on it. And you get the best minds in each subject involved in it.

So all in all I think it is a good system the way it is now.

Senator DANFORTH. Thank you very much, sir.

Mr. ROSENBAUM. Thank you.

[The statement follows:]

STATEMENT OF CLIFFORD J. HARVISON, MANAGING DIRECTOR, NATIONAL TANK TRUCK CARRIERS, INC.

Mr. Chairman, my name is Clifford J. Harvison and I am Managing Director of National Tank Truck Carriers, Inc. (NTTC), 1616 -P-Street, N.W., Washington, D.C., 20036. I have served the tank truck industry in a management capacity for the past 16 years.

NTTC is the national trade association of the for-hire tank truck industry. Our 225 members specialize in the common carriage of commodities in bulk, in tank vehicles throughout the 48 Continental United States. Since most of the commodities we haul would fall into the regulatory categories of hazardous materials, hazardous substances, and/or hazardous wastes—our interest in the proposed legis-

lation is substantial, and we thank you and this Committee for the opportunity to testify.

Initially, we wish to note that we view the proposed amendments to the Hazardous Materials Transportation Act as the beginning of some much-needed refinement of the existing law. We urge this Committee to keep in mind that the transportation community views the HMTA as but one piece in a complicated legislative puzzle in that its provisions must be reconciled (in the marketplace) with the constraints of the Resource Conservation and Recovery Act, the Motor Carrier Act of 1980 and so-called chemical and oil "Superfund" legislation, both enacted and pending.

Mr. Chairman, my testimony, today, will concentrate in two areas. First, I will comment on the prime thrusts of the proposed amendments; and, secondly, I will suggest additional areas wherein I believe legislative correction—and direction—is most needed, but not included in S. 960.

First and foremost, NTTC views the most significant change embodied within the proposal to be the shift in enforcement responsibility for hazardous materials carriers from the Federal structure (specifically, DOT) to the states.

We enthusiastically support this concept.

In explanation of this position, allow me to outline the following. Presently, there are two main entities, within DOT, exercising substantial oversight over the motor carrier industry—the Materials Transportation Bureau (under the Research and Special Programs Administration) and the Bureau of Motor Carrier Safety (reporting to the Federal Highway Administrator). It is important to recognize that the Materials Transportation Bureau has little or no enforcement capability, while the Bureau of Motor Carrier Safety has only about 170 persons in the field to check the compliance of millions of trucks and hundreds of thousands of private and for-hire carriers, and shippers only nine of which are designated hazardous materials specialists.

Therefore, since it is apparent that the Congress believes as we do—namely, that the bedrock of hazardous materials transportation safety is a responsive and responsible enforcement program—it would appear that three options exist—do nothing, hire a virtual "army" of Federal enforcers or utilize existing resources in a more productive manner.

The bill suggests the latter alternative, and we agree.

In point of fact the enforcement resources of the DOT's Bureau of Motor Carrier Safety are so slim that the Bureau has acknowledged an existing policy of non-enforcement against intrastate carriers, even though most highway safety analysts agree that intrastate truck transportation has as significant a potential for violation as does the interstate operator.

Presently, every State (and their larger cities and other political subdivisions) have, in place, police and other enforcement personnel who, with a modicum of training in the Federal hazardous materials regulations could (we believe) significantly augment over-the-road enforcement on a daily basis to the point of replacing the Federal presence in this area. We respectfully commend to this Committee the activities of the State of Illinois in the area, which we believe demonstrates the fact that a well-planned and coordinated State program, centered on a cadre of trained State police holds much promise for the future.

We wish to stress that we are not advocating complete withdrawal of the Federal element from the enforcement process. We recognize that a truly bonafide enforcement effort must cross state lines and political jurisdictions. DOT's Bureau of Motor Carrier Safety already has in place (and in use) data processing capability which enables their staff and the staff of other Federal agencies to compare the relative safety performance of thousands of motor carriers. The prime sources of data entered into this system are the motor carrier accident reports (BMC 50-T) and reports generated by DOT personnel following over-the-road equipment inspections and audits of carrier records. Additionally, required "Hazardous Materials Incident Reports" (DOT 5800.1), filed by carriers, are entered into the data base.

Thus, if the various approved State plans (as envisioned by the proposed bill) were to include the simple caveat that enforcement records were to be forwarded to DOT for processing and compilation in a truly nationwide data base, NTTC believes that the objective of hazardous materials transportation enforcement would be enhanced.

Thus, we would envision the future role of the Bureau of Motor Carriers Safety to be one of data collection, review and analysis for the purposes of directing compliance efforts and regulatory refinement.

Of course, NTTC is not blind to the fact that the task of training enforcement personnel at the State level will take money, nor are we insensitive to the current temperment regarding budget outlays—particularly outlays for "new" money. We believe, however, that the task could be completed with minimal expense.



In this regard, it should be noted that there already exist training facilities (such as those in Colorado and Oklahoma) which have outstanding programs suitable for expansion. Additionally any number of State police (and large, urban police forces) have training academies, where physical facilities currently exist. Therefore, we don't think that huge expenditures will be required to build physical plants.

In short, Mr. Chairman, we are certain that between the use of existing facilities, plus the ready availability of training programs and aids generated by industry, the expenditure of funds can be kept to a minimum.

Next, we move to the topic of routing and pre-notification as outlined in Section 122(a) of the bill.

Initially, we have no objection to any "study" of this nature. In fact, we believe that this Committee would be pleasantly surprised by the amount of the work that the Department of Transportation has done, already, with regard to routing and we suggest that the 18 month time frame for the routing study could be cut, substantially.

We must admit our reservations, however, concerning Subparagraph (a)(3)(A).

In the first instance, NTTC is concerned that forcing a bureaucratic determination as to whether or not any particular mode is, defacto, unacceptable for the transportation of hazardous materials (either specific commodities or classes) will prompt little more than political cat fights. For instance, let's assume that a particular Secretary or modal Administrator is chosen from the ranks of the trucking, rail, barge or pipeline industry. Such being the case every determination called for in Section 122(a)(3)(A) would be controversial and suspect. The very bases of such determination would be open to attack since, as this Committee and its staff are all too well aware of, each and every competing mode can produce volumes of statistics which proves that "we are the safest".

Trucks are "safest" until there's a collision; rails are "safest" until there's a derailment; barges are the "safest" until there's a fog or a run-aground; and, pipelines are the "safest" until there's an underground fracture. We just don't think that Section 122(a)(3)(A) offers any true solution to the public, carriers or shippers and we urge that it be stricken.

Subsection (b)(1) deals with "pre-notification", and, strikes terror into our collective hearts. We are cognizant of the fact that this subsection only calls for Secretary to make a feasibility report and we certainly can't oppose it, but, conversely, we can't overlook the political and social ramifications.

To many people, outside the transportation community, pre-notification seems like an easy thing to do. "Why", they asked, "can't a certain carrier make a simple phone call to a local or state government and tell them what's coming through town?"

What those who pose this seemingly rhetorical question fail to appreciate is the sheer volume of hazardous materials moving in this nation every business day. DOT estimates that over 100,000 petroleum tank truck deliveries are made daily—and over 90 percent of those involve hazardous materials. Of course, such does not include the thousands of tons of corrosive, gases, etc. which also move from industry to industry.

Some of our larger members log over 2,000 dispatches per day, over 70 percent of which may be hazardous, and many of those move through five or more states and scores of local jurisdiction. All of a sudden the concept of a "simple phone call" becomes more akin to a phon-a-thon.

Therefore, we respectfully suggest that this Committee review this section most carefully with the objective of narrowing the scope of the pre-notification study, substantially.

Mr. Chairman, we do wish to note that there are some areas of the hazardous material transportation safety not presently contemplated in S. 960, but which we believe should be added and would make true contribution to more effective Federal and state oversight and enforcement.

The first two areas are simple. Number one, NTTC asks that the present section of the Hazardous Material Transportation Act dealing with registration be changed from permissive language to mandatory language. Simply stated, we believe that the Secretary should be directed, by Congress, to compile a master list of all carriers of hazardous materials, private and for-hire, interstate or intrastate, regardless of mode.

This registration should be a simple "census" type noting the name, address and phone number of the transportation enterprise—no more, no less. This listing should be distributed to State governments and revised as needed. Frankly, we can't see how a responsible safety enforcement program can be conducted unless those charged with the enforcement "know who the players are".

Secondly, NTTC asks that the Act be amended to require motor carriers of hazardous materials to identify each vehicle (used for the transportation of hazardous materials) with a corporate or individual name and city and state of domicile. Again, enforcers must know with whom they are dealing.

Our third proposed addition to S. 960 is (admittedly) not simple and it is controversial. What we seek is a much stronger and truly workable section dealing with Federal preemption of state and local laws and ordinances.

NTTC knows, firsthand, that the present working of Section 112 of public law HMTA just doesn't work. Our Association is presently involved in three different Federal courts (in Boston, Rhode Island and New York) in protracted litigation involving state and local tank truck rules. We believe rules such as these are inconsistent with Federal regulations and/or are burdensome on commerce. These local statutes run the gamut from total bans on transportation to special signs and placards.

Unfortunately, it would appear that the actions taken by the three jurisdictions, noted above is just the beginning. Numerous other states and municipalities are considering their "own" hazardous materials rules.

The ordinance and regulations of the City of Boston are, perhaps, "classics". In that City, present rules ban all through traffic or trucks laden with certain amounts of six classes of hazardous materials. A 6 a.m. to 8 p.m. ban on local deliveries of those commodities exists and violators are subject to both civil and criminal penalties. But, for purchasing \$600 worth of permits from the City, a carrier may conduct "business as usual". A copy of the Boston regulations will be furnished for the record.

Mr. Chairman, it is not our intention to demean the proclivities of the City fathers of Boston—or anyone else. We recognize and appreciate the fact that local political leaders first feel the brunt of public concern and anxiety prompted by hazardous materials in their communities.

It must be recognized, however, that these individualized actions create impossible burdens on shippers and carriers of commodities which are essential to our life style and productivity.

Generally speaking, it has been our experience that promoters of localized regulations have acted: (1) without general knowledge of the scope and efficacy of Federal regulations; and (2) out of frustration borne of the reality of minimal Federal enforcement efforts.

This bill, calling for increased state enforcement efforts with properly trained personnel alleviates only half the problem.

For the transportation sector to be able to operate efficiently and in compliance the concept of uniformity must be strengthened. It is not enough for the law to depend on determinations of "consistency", since that vague term is subject to the whim and fancy of every echelon of official—from city attorneys to Federal judges.

Functionally and fundamentally, NTTC asks that strong preemption language be incorporated in this bill and be based on three principles:

(1) a statutory presumption that the Federal hazardous materials regulations have dominance;

(2) that the registration powers granted to the Secretary shall not be abridged by state and local officials and that requirements for permits, fees, etc. are considered unduly burdensome; and,

(3) that the burden for obtaining waiver or exemption from Federal regulations, for communities with unique situations, be placed on the state or local jurisdiction, and that such waiver be obtained prior to enactment of local laws and ordinance.

Mr. Chairman, there are an estimated 23,000 communities in this nation. I'm sure I don't have to detail the potential chaos in transportation should just those communities with populations over one million impose their own strictures and regulatory barriers.

Again, I thank this Committee for the opportunity to testify and I'll be happy to attempt to respond to any questions or comments.

[The following information was subsequently received for the record:]

NATIONAL TANK TRUCK CARRIERS, INC.  
Washington, D.C., May 6, 1981.

Senator ROBERT PACKWOOD,  
Chairman, Senate Commerce, Science & Transportation Committee,  
Washington, D.C.

DEAR CHAIRMAN PACKWOOD: Thank you, first, for the opportunity to testify on S. 960 on April 28th before your Committee.

This letter will follow up our comments concerning the tank truck transportation of hazardous materials, especially as they regard the Michigan Highway Safety Institute study.

Frankly, Mr. Chairman, we are in favor of the states being permitted to increase the allowable width of highway vehicles from 96" to 102". We support this change for three reasons: (1) safety—wider tank trucks will lower the center of gravity of the vehicles, making them more stable and less susceptible to overturn; (2) productivity—by widening trailers, more cargo can be handled per trip. Additionally, two standard pallets may be placed on the vans and flat bed trucks operated by NTTC members; (3) accident exposure—this change would reduce accident exposure because fewer trips would be required since more freight could be handled per vehicle. Fuel would be saved for the same reason.

Therefore, I doubt that you can find anyone with even the slightest knowledge of transportation and distribution against changing the allowable width to 102" for trucks.

Very truly yours,

ALBERT B. ROSENBAUM, III,  
*Assistant Managing Director.*

Senator DANFORTH. Our final witness is William E. Johns, managing director, technical services division, American Trucking Associations, Inc.

**STATEMENT OF WILLIAM E. JOHNS, MANAGING DIRECTOR,  
TECHNICAL SERVICES DIVISION, AMERICAN TRUCKING ASSO-  
CIATIONS, INC.**

Mr. JOHNS. Mr. Chairman, my name is William E. Johns. I'm managing director of the technical services division of the American Trucking Associations, Inc., ATA. I previously held other positions in the trucking industry, including that of ATA director of safety. For the record, ATA is domiciled in Washington, D.C. We are a federation of 51 State trucking associations and we have 13 national conferences, which represent various types of truck operations.

I understand that the subcommittee is short on time at this hearing, so I'll keep my remarks brief. We will submit written comments on those portions of S. 960 that are of particular interest to the trucking industry.

One of the important purposes of S. 960 stated in section 2(b) is to promote the public safety by providing for increased coordination among the various levels of Government and greater consistency among Federal, State and local rules and regulations. The trucking industry is certainly in agreement with that purpose. We believe it needs to be strengthened. To protect the public interest for safe and efficient transportation of hazardous materials, this act should protect against impractical laws and should promote greater uniformity among Federal, State and local hazardous materials laws and regulations. Too often, State and local laws are based on emotion rather than on knowledge of hazardous materials. Too often they are based solely on local concerns without consideration of transportation needs of the Nation.

For well over 1 year American Trucking Associations, and two of its affiliates, National Tank Truck Carriers and Massachusetts Motor Transport Association, have been contesting requirements of the city of Boston which would establish new definitions of hazardous materials, require pickup and delivery of hazardous materials at night, and, among other requirements, impose burdensome routing restrictions on trucks transporting hazardous materials.

The Boston problem is part of a trend toward additional restrictions by States and localities such as Buffalo, Wilkes-Barre, and Missoula, Mont., which tried to force radioactive material trucks off interstate highways onto less safe roads. This trend is continuing and appears to be increasing at a faster rate. With the proliferation there is a greater variation of requirements, more confusion among transporters and shippers about how to comply, and less ability to operate safely and efficiently. There are several needs in Federal legislation that can mitigate the problem.

First we need Federal requirements for strict uniformity for interstate and intrastate transportation among the Federal, State and local governments on such matters as shipping documents, labels, placards, equipment, and containers. There must also be a requirement for Federal guidelines that establish a framework within which the States and localities can establish regulations applicable to local matters such as routing of vehicles.

There needs to be a requirement for review of State and local hazardous materials laws by the Secretary of Transportation to eliminate inconsistencies with Federal requirements and to assure that such laws are necessary and will not unduly burden commerce.

Mr. Chairman, we believe that the States and localities must have the opportunity to contribute to the hazardous materials regulatory process, but the Congress must establish controls which insure that safe and efficient hazardous materials transportation is provided on a State and local level.

In closing I would like to read the official statement of the ATA executive committee on the matter of legislation to insure uniformity of hazardous materials laws and regulations and I quote:

That Congress declares that laws, rules, regulations, orders and standards relating to the safety of highway transportation of hazardous materials shall be nationally uniform to the extent practicable. A state may adopt or continue in force any law, rule, regulation, order or standard relating to the highway transportation of hazardous materials until such time as the Secretary has adopted a rule, regulation, order or standard covering the subject matter of such state requirement. A state may adopt or continue in force an additional or more stringent law, rule, regulation, order or standard, relating to the highway transportation of hazardous materials when necessary to eliminate or reduce an essentially local safety hazard and when not incompatible with any federal law, rule, regulation, order or standard and when not creating an undue burden on interstate commerce.

Mr. Chairman, that concludes my remarks. I have not recommended specific wording for the revision of the Hazardous Materials Act to improve section 112. We will do so in our written comments.

I thank you for the opportunity to present this testimony, and if you have any questions, I will be happy to answer them.

Senator DANFORTH. Thank you very much for your testimony. I appreciate it.

Mr. JOHNS. Yes, sir.

Senator DANFORTH. The record will be kept open for an additional 2 weeks for the submission of any additional testimony or any questions by members of the committee.

That completes the hearing.

[Whereupon, at 12 o'clock noon, the hearing was concluded.]



## ADDITIONAL ARTICLES, LETTERS, AND STATEMENTS

STATEMENT OF ARTHUR J. SCHULTZ, JR., PRESIDENT, STEEL SHIPPING CONTAINER INSTITUTE, WITH CONCURRENCE BY MORRIS HERSHSON, PRESIDENT, NATIONAL BARREL & DRUM ASSOCIATION

Gentlemen: The Steel Shipping Container Institute, hereinafter referred to as SSCI, 2204 Morris Avenue, Union, New Jersey 07083, is a nonprofit National Trade Association, whose members are engaged in the production of new steel shipping pails and drums. At the present time, there are 36 member companies in the United States producing 90 percent of the steel drums and pails manufactured in the United States. These 36 member companies operate 85 plants throughout the United States, producing 50 million drums, of which 30 million are reusable 55 gallon drums, and 100 million pails, annually.

This statement is submitted jointly by SSCI and the National Barrel & Drum Association, hereinafter referred to as NABADA, 910 17th Street, N.W., Suite 912, Washinton, D.C. 20036, which is also a non-profit National Trade Association. At the present time there are 150 companies who are members of NABADA in the U.S. and who are reconditioning 40 million drums annually at 160 plant sites.

President Arthur Schultz, Jr. of SSCI and President Morris Hershson of NABADA, have appeared jointly before officials of the Office of Hazardous Materials to present recommendations to restrict bazardous waste packaging authorizations in steel drums to those drums which are either new or reconditioned and tested. These recommendations were not accepted for lack of statistics concerning actual incidents involving the use of untested, unconditioned drums. We believe that the potential for harmful discharge of hazardous wastes is higher than for commercial products because of the potential difference in quality of package components and quality of supervision and training for packaging wastes.

The SSCI and NABADA have been and continue to be strong supporters of the Department of Transportation (DOT) in its work concerned with safe transportation of hazardous materials. We share also the objectives which we believe motivate this hearing, namely, to re-authorize DOT responsibilites for hazardous materials transportation, and to study training and regulatory programs related to the prevention of accidents.

Our particular objective in this statement is to emphasize that regulations and training concerning the use of steel drums, which are so widely used for the safe transportation of hazardous materials may also require some special attention in the case of hazardous wastes. We wish to draw your attention to the fact that new, and in some cases reconditioned drums, are authorized for the transport of hazardous materials, while untested, unreconditioned drums are excluded.

This strict authorization is based on the need to use high quality containers and closures to minimize accidental discharge of contents. Similar high quality is not so strictly required for hazardous wastes and we foresee the possibility of careless oversight in waste packaging, which is unlikely to receive the care in closure and shipment that a shipper's saleable products might receive. We also foresee the possible rapid deterioration and disintegration of buried containers, because of these loose requirements.

We recommend that trainers and regulators require that only new or reconditioned and tested drums be used for transportation of hazardous wastes, and that publicity be given to the need of shippers to instruct waste packagers in the use of high quality components, properly assembled before hazardous wastes are allowed to leave the generator's site.

Thank you for the opportunity to present our views and recommdations for consideration by this committee. We are pleased to offer further information and assistance which may be useful for effective regulation and training for the safe transportation of hazardous materials and hazardou wastes in drums or pails.

## STATEMENT OF THE AMERICAN GAS ASSOCIATION

The American Gas Association (A.G.A.) submits the following statement on reauthorization of the Natural Gas Pipeline Safety Act of 1968 (NGPSA).<sup>1</sup> A.G.A. is a national trade association representing nearly 300 natural gas transmission and distribution companies for nearly 85 percent of the nation's total annual gas utility sales.

A.G.A. took an active interest in S. 411 and H.R. 51, the two legislative proposals of the last Congress which culminated in the Pipeline Safety Act in 1979 (the Pipeline Safety Act),<sup>2</sup> which amended the NGPSA. While the Pipeline Safety Act amendments to the NGPSA are not perfect—from our standpoint—they are workable and our industry has encountered relatively few problems in working with them.

In addition to authorizing appropriations for fiscal year 1982 and fiscal year 1983 for carrying out the provisions of the NGPSA, this draft legislation would amend the NGPSA as follows:<sup>3</sup>

The Technical Pipeline Safety standards Committee (TPSSC) and the Technical Hazardous Liquids Pipeline Safety Standards Committee (THLPSSC) would be required to meet at least twice each calendar year. Under the current §§1673(b) and 2013(a), the TPSSC and the THLPSSC must meet no less than every six months; and,

The current proposal before the Senate would change the judicial review provisions in the NGPSA to allow parties affected by an agency action up to 90 days after that action to seek judicial review.

A.G.A. has no fundamental objection to either proposed change. The first proposal should have a positive effect of increasing the usefulness of TPSSC/THLPSSC meetings.

Although we are satisfied with the present judicial review provisions, we would not oppose the second change. However, we would oppose any comprehensive change which goes beyond the scope of this amendment, as did early, draft legislative proposals which were considered—and rejected—in staff discussions. This draft would have placed parties on two separate remedial tracks and would have lengthened the resolution of challenges to agency action.

## FREQUENCY OF TPSSC/THLPSSC MEETINGS

A.G.A. concurs with DOT that the Technical Committee should not be held to the requirement of meeting every six months simply because the law requires these meetings to take place. They should meet at least twice a year with the timing of the meeting determined by events, not by statute.

A.G.A. understands that this amendment was suggested because the TPSSC was required by § 1673(b) to meet in December 1980, since it had been six months since the last TPSSC meeting (in June, 1980). According to DOT,<sup>4</sup> that meeting was unnecessary since it was the third to be held in 1980, and would not have been held had it not been for the six month requirement in § 1673(b).

Bringing together the technical experts who comprise these Technical Committees should be done only if a Technical Committee meeting is necessary to resolve issues of significance to the regulated industry and the general public. the proposal changes would satisfy these concerns.

## JUDICIAL REVIEW UNDER THE NGPSA

A.G.A. opposes any amendment to the judicial review provisions of the NGPSA Sections 1675 and 2005 that would create a sequential route for seeking relief from agency action and, thereby, lengthen the amount of time that DOT has under law to make a decision regarding any challenge to agency action. Changes of this type will only slow down an already laborious process. A.G.A. has taken this position for these three reasons:

(1) the existing NGPSA judicial review provisions are simple, and the gas industry has found them to be workable;

(2) the only result of these types of changes will be to protract the period of time during which the agency can consider petitions for reconsideration; and,

<sup>1</sup> Pub. L. 90-481; 49 U.S.C. § 1671.

<sup>2</sup> Pub. L. 96-129; 93 Stat. 989; 49 U.S.C. § 1671.

<sup>3</sup> Title III of the Pipeline Safety Act is referred to as the "Hazardous Liquids Pipeline Safety Act of 1979".

<sup>4</sup> L. D. Santman, Director of DOT's Materials Transportation Bureau, appearing before the House Subcommittee on Surface Transportation of the Energy and Commerce Committee on April 7, 1981, testified to this effect.

(3) DOT has not provided any specific reasons why this change in the NGPSA should be adopted.

Consequently, A.G.A. opposes any changes in the present judicial review provisions of the NGPSA beyond extending to 90 days the deadline for filing for judicial review of an agency action.

A.G.A. has had experience with the present judicial review provision in Section 1675 of the NGPSA. Last year, DOT issued a regulation governing the siting, design and construction of liquefied natural gas (LNG) facilities.<sup>4</sup> A.G.A. was not satisfied that several key arguments in its comments on the proposed rule had been adequately addressed in the final rule. Consequently, A.G.A. filed a petition for reconsideration with the Secretary of Transportation. Under the existing rules of practice of the Materials Transportation Bureau (MTB),<sup>5</sup> A.G.A. had 30 days (from the issuance of the final rule) within which to file its petition for reconsideration. Concurrent with this 30-day time limit, A.G.A. had 60 days under Section 1675 of the NGPSA within which to file a petition for judicial review in the U.S. Court of Appeals. Since the MTB rules provide that filing a petition for reconsideration does not stay the effective date of a rule, A.G.A. chose to file a petition for judicial review under Section 1675 of the NGPSA.<sup>6</sup> Had judicial review not been available as under Section 1675, A.G.A. member companies would have been faced with a duty to implement these effective rules with no response to or resolution of certain substantive arguments which the industry had made throughout this three year rulemaking and again in A.G.A.'s petition for reconsideration.

It has been our experience that the judicial review provisions of the NGPSA, in conjunction with the Administrative Procedure Act (APA), provide an adequate amount of time for both opponents of rules and for DOT to reach accommodation. The APA does not set any limit on the amount of time the agency can use in considering a proposed rule. MTB took nearly three years to issue its final rule. After such careful consideration of all comments in the proposed rule state, the agency should be able to resolve any additional concerns raised in a petition for reconsideration within the 30 day period from the filing of the petition for reconsideration (by the 30th day after agency action) to the time the party files a petition for judicial review (by the 60th day after agency action).

The only result of the type of changes considered and rejected during early staff discussions of NGPSA reauthorization would be to protract the time during which the agency can consider petitions for reconsideration. Currently, if the agency has not acted within 60 days, the party may seek judicial review. While current efforts on all levels of government are focusing on a "fast track" for agency action, the changes proposed in early discussions with Committee staff on NGPSA reauthorization would have put parties who have requested reconsideration of agency action on a "slow track" (taking up to 150 days to resolve).

Finally, A.G.A. is concerned DOT has not shown any pressing need for changing the status quo in the judicial review provisions of the NGPSA. In his testimony of April 7, 1981, before the Subcommittee on Surface Transportation of the House Energy and Commerce Committee on NGPSA reauthorization, the strongest criticism offered by L. D. Santman, Director of MTB, regarding the current procedure was:

" . . . time and resources will be allocated to judicial filings and . . . such filing will be subsequently withdrawn upon receiving favorable administrative action from DOT in response to the aggrieved party's administrative appeal."

A.G.A., however, does not believe that the current process need be changed, since our experience has not proven this process to be either deficient or disadvantageous.

#### CONCLUSION

A.G.A. appreciates the opportunity of providing its views on the proposed S. , the "Pipeline Safety Authorization Act of 1981". We would be glad to work with members of the Subcommittee on any aspect of our testimony.

<sup>4</sup> 45 *Fed. Reg.* 9184; February 11, 1980, as amended by 45 *Fed. Reg.* 57403; August 28, 1980.

<sup>5</sup> 49 C.F.R. § 106.35.

<sup>6</sup> *American Gas Association v. Materials Transportation Bureau*, D.C. Cir., Docket No. 80-1337.

<sup>7</sup> *Mimeo* at page 16 of Santman's prepared statement.



NATIONAL ASSOCIATION OF REGULATORY UTILITY COMMISSIONERS,  
Washington, D.C., April 14, 1981.

Hon. BOB PACKWOOD,  
Chairman, Committee on Commerce, Science, and Transportation,  
U.S. Senate, Washington, D.C.

DEAR CHAIRMAN PACKWOOD: The National Association of Regulatory Utility Commissioners (NARUC), whose members include the commissions of the fifty States engaged in regulating utilities, respectfully urges you to support continued funding for the Natural Gas Pipeline Safety and Federal Railroad Safety programs at an undiminished level, plus an increase to compensate for inflation.

As State commissioners actively participating in the Federal-State partnership established by such legislation as the Natural Gas Pipeline Safety Act of 1968 and the Federal Railroad Safety Act of 1970, we value the continuation of these safety programs. We also value the joint effort of both Federal and State governments to regulate judiciously operations which must be carefully monitored and controlled to protect the lives and property of our communities and the nation as a whole.

The Natural Gas Pipeline Safety Program. The Subcommittee on Surface Transportation is now considering H.R. 2961, a bill authorizing appropriations for the pipeline safety programs for fiscal years 1982 and 1983. The funding to the States which would be provided by this bill is so insufficient that the operation and enforcement of these programs will be jeopardized.

The NARUC has repeatedly pointed to the Natural Gas Pipeline Safety Act, and the program established by its authority, as a model for Federal-State cooperation. The State commissions are included in the planning stages of the program; they are consulted regularly; and their opinions and recommendations are heard and acted upon.

Under this Act, a State agency, which has been certified by the Department of Transportation (DOT), may participate in monitoring and enforcing natural gas pipeline safety standards. If the agency enters a less extensive agreement with DOT, the agency may monitor the gas pipeline operations but has no actual enforcement authority. The Federal government is authorized to grant up to 50 percent of the costs to the States for conducting such programs [49 U.S.C., Sec. 1674(d)(1)].

In 1980, forty-seven States and Puerto Rico were involved in monitoring and enforcing natural gas pipeline safety standards under the Act: 50 agencies by certification and 4 by agreement. (Delaware, Massachusetts, Nebraska, and New Jersey participated by agreement.) The Materials Transportation Bureau of DOT has received additional requests from two States which were not involved in the 1980 program: Texas has requested funds for 1981, and New Mexico, which filed its request too late to be included in the 1981 program, will be participating in 1982.

For fiscal year 1981, the participating State agencies have requested a total of \$4,570,302 from the Materials Transportation Bureau (MTB). However, the MTB has only \$3,082,000 available for allocation to the States for their natural gas pipeline safety programs.

In other words, the MTB would need approximately \$1.5 million to fulfill these requests from the States for fiscal year 1981. This year will be the first in which the MTB has not been able to match the full 50 percent of the costs to the States for the gas pipeline safety programs. With the inevitable inflation of the coming year and the continuing cuts in State revenues and budgets, the State agencies will be without the resources to operate and enforce their safety programs effectively.

Federal grants-in-aid to the States for fiscal year 1982 are currently proposed at \$3,618,000. Given the shortage of funds for fiscal year 1981, it is doubtful that the existing programs can continue functioning at necessary levels and there will certainly not be enough funds for initiating new programs or furthering efforts by the States to expand or otherwise improve their existing programs, as the MTB has encouraged.

The NARUC continues to support State regulation of both intra- and interstate natural gas pipelines under the Natural Gas Pipeline Safety Act of 1968 and again urges the Materials Transportation Bureau to encourage States to act as interstate agents for the Federal government. At its 92nd Annual Convention, held November 1980 in Houston, Texas, the NARUC passed a resolution opposing any future efforts by the MTB to curtail the surveillance and compliance duties of State regulatory authorities which are authorized as agents of DOT and actively participating in the regulation and enforcement of interstate pipeline safety standards. (A copy of NARUC Convention Resolution No. 8 is attached.)

The Association also urges that the Federal government fully support out-of-state travel and training needs for State gas pipeline safety programs. Since a number of States have severely restricted or prohibited out-of-state travel because of fiscal problems and since formal Federal training for gas pipeline safety personnel is only

conducted by DOT at the Transportation Safety Institute in Oklahoma City, Oklahoma, the NARUC has passed a resolution at its 92nd Annual Convention, endorsing the concept of 100 percent Federal funding for these out-of-state travel and training needs. (A copy of NARUC Convention Floor Resolution No. 15 is attached.)

The Federal Railroad Safety Program. Similar to the Natural Gas Pipeline Safety Act, the Federal Railroad Safety Act of 1970 authorizes States to act as agents of DOT for the surveillance and enforcement of railroad safety standards. States may participate by certification or by agreement (which limits the State to monitoring duties). Also, as with the Natural Gas Pipeline Safety Act, the Federal Railroad Safety Act, as amended, authorizes the Federal government to grant up to 50 percent of the costs to the States for running and enforcing their safety programs (45 U.S.C., Sec. 435, 444).

The NARUC has recognized the value of this safety program, which has been based on the older and highly successful Natural Gas Pipeline Safety program. At its 92nd Annual Convention in November 1980, the Association encouraged all States not currently participating in the Federal-State Railroad Safety program to join and commended the Federal Railroad Administration for its efforts in improving the joint safety program. (A copy of NARUC Convention Resolution No. 7 is attached.) Thirty States are currently participating.

The Association continues to support the Rail Safety program and asks that the Federal Railroad Administration further stimulate State participation in the program. Ample funds should be provided for grants-in-aid to the States to maintain and broaden the Federal-State partnership in monitoring and enforcing rail safety standards.

Sharing with the States the costs of regulating and enforcing these safety programs has saved the Federal government millions of dollars since the enactment of the programs. Moreover, sharing the responsibility of regulation and compliance has made for more effective administration of the programs and for increased safety.

If a State agency does not assume safety responsibility for gas facilities or for rail track and equipment within its borders, the Federal Government retains the responsibility and must bear 100 percent of the costs for enforcement. For this reason, Federal funds expended for State grants-in-aid are a very good investment.

Furthermore, the Federal-State partnership established by these programs is consistent with the new Administration's emphasis on returning to the States those responsibilities which can be more knowledgeably and more efficiently handled by those closer to the particular needs of their constituents.

We would welcome the opportunity to delineate our views at future hearings before your committee.

Please have this letter and enclosures inserted in the record of the hearings of the Committee on this matter.

Your support will be deeply appreciated and long remembered.

Sincerely yours,

PAUL RODGERS,  
*Administrative Director.*

#### CONVENTION RESOLUTION No. 7

##### RESOLUTION SUPPORTING THE FEDERAL/STATE PARTICIPATION PROGRAM IN RAIL SAFETY

Whereas the Federal Railroad Safety Act of 1970 (45 U.S.C., Secs. 421, *et seq.*) was adopted in response to a growing number of railroad accidents throughout the Nation; and

Whereas the Act granted authority to the Secretary of Transportation and the Federal Railroad Administration to promulgate and enforce uniform railroad safety standards; and

Whereas these Federal rules preempt State regulations, except in very limited circumstances; and

Whereas the Federal Railroad Safety Act of 1970 provides for State participation in areas of rail safety; and

Whereas the Federal Railroad Administration has shown a renewed interest in working with the States to improve the State participation program; and

Whereas Congress amended the 1970 Act by passage of S. 2730, the Federal Railroad Safety Authorization Act of 1980 (Public Law 96-423), to allow expansion of the State safety program to include all other Federal safety laws and reduces the amount of time a participating State must wait to seek civil monetary penalty or injunctive relief; now, therefore, be it

*Resolved*, by the National Association of Regulatory Utility Commissioners, assembled at its Ninety-second Annual Convention in Houston, Texas, that all States

not currently participating in the Federal/State Railroad Safety Program are encouraged to reconsider participating in light of recent legislation and that the Federal Railroad Administration be commended for its recent efforts to improve the program and work with the States; and be it further

*Resolved*, that a copy of this resolution be sent to the President of the United States, Governors, the Congressional leadership, the Secretary of the United States Department of Transportation and the Administrator of the Federal Railroad Administration.

Sponsored by The Honorable John J. Loddell of Oregon.

Adopted November 12, 1980.

Reported NARUC Bulletin No. 2-1981, p. 3.

#### CONVENTION RESOLUTION No. 8

##### RESOLUTION RE STATE SAFETY REGULATION OF INTERSTATE NATURAL GAS PIPELINES UNDER THE NATURAL GAS PIPELINE SAFETY ACT OF 1968

Whereas the Congress enacted and the President signed into law the Natural Gas Pipeline Safety Act of 1968 (the Act) [49 U.S.C., Sec. 1671 *et seq.*]; and

Whereas the Act and its subsequent amendments establish a regulatory partnership between Federal and State agencies in monitoring and enforcing compliance with Federal safety standards, in which the United States Department of Transportation (DOT) exercises safety jurisdiction over interstate transmission facilities while State regulatory authorities may exercise jurisdiction over intrastate distribution facilities; and

Whereas DOT has delegated authority to monitor interstate pipeline safety to State regulatory authorities who voluntarily choose to conduct surveillance of interstate transmission facilities as agents of DOT; and

Whereas in the 1972 Amendments to the Act [Public Law 92-401], Congress specifically affirmed the establishment of this agency relationship by ensuring that States which choose to monitor interstate facilities may receive Federal grants under 49 U.S.C., Sec. 1674(d) "to act as agent of the Secretary [of Transportation] with respect to interstate transmission facilities"; and

Whereas thirteen States (Connecticut, Florida, Iowa, Kentucky, Michigan, Montana, Ohio, Rhode Island, Utah, Virginia, Washington, West Virginia and Wyoming) currently act as interstate agents for DOT in monitoring the safe operation of interstate pipeline operations; and

Whereas fifteen other States (Arkansas, Delaware, Georgia, Kansas, Maryland, Massachusetts, Missouri, New Hampshire, New Jersey, New York, North Carolina, Oklahoma, Oregon, Pennsylvania and Wisconsin) and the District of Columbia have been but are no longer such interstate agents; and

Whereas it is the explicit policy of DOT's Materials Transportation Bureau (MTB) to gradually eliminate State participation in the safety regulation of interstate pipelines through this relationship; and

Whereas MTB intends to end its agency relationship with the States of Florida, Iowa, Kentucky and Ohio effective January 1, 1981; and

Whereas those State regulatory authorities which act as DOT's agents perform invaluable surveillance and compliance duties which MTB would otherwise be unable to provide; now, therefore, be it

*Resolved*, that the National Association of Regulatory Utility Commissioners, assembled in its Ninety-second Annual Convention in Houston, Texas, opposes the Materials Transportation Bureau's policy of eliminating State participation in the interstate agency program; and instead urges the Materials Transportation Bureau to encourage expanded State participation by soliciting additional States to act as interstate agents and thereby establish an efficient, cost-effective regulatory mechanism to better ensure safe interstate pipeline operations in the public interest.

Sponsored by The Honorable Francis J. Riordan of New Hampshire.

Adopted November 12, 1980.

Reported NARUC Bulletin No. 2-1981, p. 4.

#### CONVENTION FLOOR RESOLUTION No. 15

##### RESOLUTION SUPPORTING THE CONCEPT OF 100 PERCENT FEDERAL FUNDING FOR OUT-OF-STATE TRAVEL AND TRAINING NEEDS RELATING TO STATE GAS PIPELINE SAFETY PROGRAMS

Whereas the Congress enacted and the President signed into law the Natural Gas Pipeline Safety Act of 1968 (the Act) [49 U.S.C., Sec. 1671 *et seq.* PL 90-481]; and

Whereas the Act and its subsequent amendments established a regulatory partnership between Federal and State Pipeline safety agencies and provided for federal funding of up to 50% of the cost of personnel, equipment, and activities required to carry out the State pipeline safety program; and

Whereas forty-six States (Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Delaware, Florida (SFM), Georgia, Hawaii, Idaho, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maine, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New York, North Carolina, North Dakota, Ohio, Oklahoma, Oregon, Pennsylvania, Rhode Island, South Dakota, Tennessee, Utah, Vermont, Virginia, Washington, West Virginia, Wisconsin, Wyoming) the District of Columbia and Puerto Rico made application for federal gas pipeline safety grant-in-aid funds for the FY 1980 allocation; and

Whereas the formal federal training for gas pipeline safety personnel is only conducted by the Department of Transportation at the Transportation Safety Institute in Oklahoma City, Oklahoma; and

Whereas the Federal representatives responsible for administering the Federal/State Pipeline Safety Program highly recommend the initial training of pipeline safety personnel and additional training from time to time in order for them to be kept current on changes in technology, regulations and enforcement policies and procedures; and

Whereas some States have considerably restricted or prohibited out-of-state travel because of fiscal problems; and

Whereas adequate training is essential for a successful pipeline safety program; now, therefore, be it

*Resolved* that the National Association of Regulatory Utility Commissioners assembled in its Ninety-second Annual Convention in Houston, Texas, support the concept of 100% federal funding for out-of-state travel and training needs related to the State gas pipeline safety programs; and urges the Material Transportation Bureau to support an amendment to the Act which would provide for this funding.

Sponsored by The Honorable Daniel J. Demlow of Michigan.

Adopted November 12, 1980.

Reported NARUC Bulletin No. 2-1981, p. 7.

NATIONAL LP-GAS ASSOCIATION  
Arlington, Virginia, April 30, 1981.

Hon. JOHN C. DANFORTH,

*Chairman, Surface Transportation Subcommittee, Committee on Commerce, Science and Transportation, U.S. Senate, Washington, D.C.*

DEAR SENATOR DANFORTH: The National LP-Gas Association (NLPGA) requests that the following comments be included in the record of the April 28, 1981, hearing of the Senate Commerce Committee Subcommittee on Surface Transportation concerning the reauthorization of the Hazardous Materials Transportation Act (HMTA) of 1974, the Natural Gas Pipeline Safety Act, and the Hazardous Liquid Pipeline Safety Act.

NLPGA is the national trade association of the LP-gas industry with a membership of over 4100, including 47 affiliated state and regional LP-gas associations representing all 50 states. The members of NLPGA are engaged in all facets of the LP-gas industry including production, wholesale distribution, and retail marketing, as well as the manufacture and sale of associated equipment and appliances. LP-gas is a hazardous material subject to the hazardous Materials Transportation Act (HMTA) of 1974 and the regulations promulgated thereunder, as well as other related statutes including the Pipeline Safety Act of 1979.

During 1979 and 1980, NLPGA had two special task forces studying hazardous materials transportation safety and emergency response issues. Recommendations from these task forces were submitted to the NLPGA Board of Directors and were approved at the Fall 1980 and Winter 1981 meetings. With respect to emergency response, the NLPGA Board action endorses the following:

1. Member companies shipping and receiving LP-gas are encouraged to develop internal response systems for handling transportation emergencies involving these shipments.

2. A mutual assistance program should be developed whereby the emergency response system that one company develops to handle transportation incidents involving its own materials could be made available to assist in the response to an incident involving another company's product.

3. A coordinated effort be made with the state LP-gas associations to promote adoption of third party liability statutory protection and Good Samaritan laws in the several states.

NLPGA is presently engaged in an industry-wide education effort with respect to the first position. In fact, emergency response was a featured part of the Safety program during our Annual Convention held last week in New Orleans. With respect to mutual assistance, a concrete proposal and mutual aid agreement has been sent by NLPGA's President to those members who we know or believe to have emergency response teams. We are confident that over time, all industry members with emergency response teams will voluntarily agree to make their teams available through the Chemical Manufacturers Association-sponsored Chemical Transportation Emergency Center (CHEMTREC).

We believe that the cornerstone of this program, however, is Good Samaritan legislation. Just as the medical profession discovered twenty years ago, there is a need to insulate from liability those "good samaritans" who voluntarily come to the aid of others in an emergency. NLPGA has drafted a model Good Samaritan Law for adoption by state legislatures, a copy of which is enclosed. As a subject of tort law, we believe state adoption is more appropriate and affords greater protection than federal legislation. NLPGA is happy to report that versions of its Good Samaritan law have been adopted by the states of Virginia, Rhode Island, and South Dakota, and legislation is now pending or was introduced in the states of Alabama, Arkansas, Georgia, Maryland, Mississippi, New Jersey, North Carolina, Pennsylvania, South Carolina, Tennessee, Texas and Washington.

As noted earlier, recommendations of a Hazardous Materials Transportation Task Force were adopted by the NLPGA Board of Directors in January of this year. Those recommendations emphasize the need for uniformity of regulation; continued emphasis on training of local emergency response personnel; support for local and state jurisdiction over hazardous materials incidents; and a need to insure that LP-gas is handled and regulated in a manner consistent with the physical characteristics of the product and traditional industry practices. The position also reflects the NLPGA Board opposition to mandatory registration of LP-gas shippers and carriers as recommended by the National Tank Truck Carriers (NTTC). We believe that such registration would not further safety, but would only add unnecessary paperwork, precluding no tangible benefits. Similarly, NLPGA notes for the record that in all instances involving LP-gas carriers of which we are aware, vehicles are currently identified with the carrier's corporate or individual name and the city and state of domicile. This identification should more than adequately satisfy the NTTC's call for registration without imposing needless paperwork burdens on industry and further enlarging the governmental bureaucracy.

The Board position recognizes that there may be instances where states or localities may be better able to address the routing of hazardous materials because of unique local situations; however, NLPGA generally supports the preemption provisions of the HMTA and has participated in the filing of inconsistency petitions with the Department of Transportation. Enclosed is an inconsistency petition concerning certain New York City Fire Department regulations which we believe is illustrative of what NLPGA would characterize as unnecessary and duplicative regulation which impedes and delays interstate commerce. Federal preemption ensures the free flow of commerce and uniformity in enforcement. It also aids in emergency response by providing one set of identification and hazard systems instead of a multitude of possibly conflicting and confusing local or state systems.

In this regard, we support the recommendation from the NTTC that the HMTA be amended to add strong preemption language so that federal law and regulation of hazardous materials transportation would preempt state and local action. Specifically, we support amendments to the HMTA which would:

1. create a statutory presumption that the federal hazardous materials regulations have dominance;
2. provide that the registration powers granted to DOT shall not be abridged by state and local officials and that requirements for permits, fees, etc., are considered unduly burdensome; and,
3. place on state or local jurisdictions the burden for obtaining waiver or exemption from federal regulation for communities with unique situations, and would require that such waiver must be obtained prior to enactment of local laws and ordinances.

NLPGA has reviewed Senator Howard Cannon's S. 960, a bill to amend the HMTA. We note that most of its provisions call for studies of such important subjects as training in the handling of hazardous materials, and emergency response. We are opposed, however, to the concept of prenotification as suggested in Section 122(b) of S. 960. Prenotification can result in unduly burdening business

with additional paperwork and reporting requirements, and more importantly can cause inordinant delays in the expeditious movement of an essential energy source. This is particularly unworkable during times of extreme need such as the winter heating season, or during crop drying and tobacco during seasons, when the consumer's need for fuel is urgent and should not be impeded for any reason.

We request that these comments be entered in the formal hearing record and trust that they will be considered as further review of the HMTA and the Pipeline Safety Act of 1979 continues. We also request an opportunity to further expand on our concerns regarding suggestions for prenotification schemes during later hearings before the Senate Commerce Committee.

Sincerely yours,

DANIEL N. MYERS,  
*Vice President, Government Relations.*

Enclosures.

#### MODEL GOOD SAMARITAN LAW

Section 1. Notwithstanding any provisions of law to the contrary, no individual, partnership, corporation, association, or other entity shall be liable in civil damages as a result of acts taken or omitted in anticipation of, in preparation for, or in the course of rendering care, assistance, or advice with respect to an incident creating a danger to person, property, or the environment as a result of spillage, seepage, fire, explosion, or other release of compressed gases, or the possibility thereof, during the course of transportation of such gases by any mode whatsoever, including loading and unloading.

Section 2. Notwithstanding the foregoing, nothing in this part applies to the rendering of such care or assistance where the same is rendered for remuneration beyond reimbursement for out of pocket expenses in connection therewith, or with the expectation of such remuneration, from the recipient or recipients of such care or assistance or someone on his or their behalf.

Section 3. This part shall not preclude liability for civil damages as the result of gross negligence or intentional misconduct, reckless, willful, or wanton misconduct shall constitute gross negligence.

#### RECOMMENDED POLICY POSITIONS OF HAZARDOUS MATERIALS TRANSPORTATION TASK FORCE

NOVEMBER 19, 1980.

At the meeting of the Hazardous Materials Transportation Task Force in Atlanta, Georgia, on November 19, 1980, the following policy positions were recommended for presentation to the Public Affairs Committee for approval and further submitted to the NLPGA Board of Directors for adoption.

1. Recognizing problems which have developed at recent hazardous materials emergencies created by duplications of authority, lack of a clear chain of command, and/or lack of experience in the proper handling of LP-gas, the Task Force RECOMMENDS the following parties be in charge at the scene of an emergency involving the respective transportation mode:

A. Rail—The senior railroad official present should take charge, with assistance from shipper representatives, state and local authorities, and federal authorities from the Federal Emergency Management Agency (FEMA). This recommendation represents a shift from the current situation where a representative from the Environmental Protection Agency (EPA) usually acts as the on-scene coordinator pursuant to the existing National Contingency Plan.

B. Truck—Since state and local police and fire departments generally handle truck emergencies adequately, they should continue to exercise these responsibilities with shipper and carrier assistance. The Task Force sees no role for a federal coordinator in truck emergencies.

2. The Task Force opposes duplicative regulation in any form, whether as a result of overlapping federal jurisdictional areas or caused by state or local restrictions which are inconsistent with a uniform nationwide transportation policy. The Task Force further opposes any law or regulation which impedes the flow of commerce or unnecessarily burdens such commerce. The Task Force therefore RECOMMENDS that NLPGA support uniformity within the federal regulatory structure, suggesting that the Department of Transportation (DOT) exercise jurisdiction over technical and safety regulation, and that FEMA should exercise emergency response jurisdiction in conformance with the recommendation in No. 1. To the extent that it is in conflict, the Task Force also RECOMMENDS that the National Contingency Plan be amended so that the Federal Emergency Management Agency (FEMA) be the lead federal agency at the scene of an emergency and that representatives of FEMA

assume the on-scene coordinator role now residing in the Environmental Protection Agency (EPA).

Recognizing that the Hazardous Materials Transportation Act of 1974 gives DOT jurisdiction over intrastate as well as interstate hazardous materials transportation; recognizing that DOT is increasing its involvement in intrastate matters; and, recognizing the desirability of uniformity in regulation, the Task Force RECOMMENDS that when a state decides to regulate LP-gas transportation or revise existing regulations, they should be encouraged to adopt the DOT regulations which govern such transportation and enforce such regulations as their own.

3. The Task Force recognizes a continuing need for emphasis on training of local fire and police personnel as well as a positive industry image concerning LP-gas emergencies. The Task Force supports current and planned NLPGA Safety Committee activities designed to aid and enhance the training of local emergency response personnel. The Task Force also RECOMMENDS that the 1978 "Fact Sheet" on LP-gas be revised and updated to incorporate emergencies where disasters were averted or accidents avoided. The Task Force encourages NLPGA to seek opportunities to publicize the positive safety activities of the industry.

4. Although supportive of uniformity in transportation regulation, the Task Force recognizes that there may be instances where states or localities, due to unique local situations, may be better able to address the routing of hazardous materials carriers. The Task Force RECOMMENDS that although DOT regulation of routing is generally preferable in order to insure the unimpeded flow of commerce, a case-by-case approach should be exercised in order to recognize those uniquely local situations which may require a different approach. In this regard, the Task Force supports the preemption provisions of the Hazardous Materials Transportation Act (49 USC 1811) as implemented through the DOT inconsistency rulemaking procedure at 49 CFR Part 107.

5. Section 106(b) of the Hazardous Materials Transportation act of 1974 permits DOT to register any person who carries or ships hazardous materials in commerce or who manufactures, fabricates, marks, maintains, reconditions, repairs, or tests packages or containers for use in the transportation of hazardous materials. The suggestion has been made that this permissive registration, which has never been fully implemented by DOT, should be made mandatory for shippers and carriers. The Task Force RECOMMENDS that NLPGA oppose any mandatory registrations of LP-gas shippers or carriers since such registration would not further safety, would only add unnecessary paperwork, and would not result in any tangible benefits. The Task Force distinguishes the registration of shippers and carriers from equipment registration programs.

6. The Task Force is concerned that there is an increasing tendency on the part of both governmental and non-governmental organizations to blur the distinctions between various hazardous materials and to treat all materials alike under such broad categories as hazardous materials, hazardous substances, hazardous wastes, or toxic substances. Of these broad categorizations, only "hazardous material" is appropriate when referring to LP-gas. The Task Force RECOMMENDS that NLPGA exercise vigilance over any governmental or non-governmental references and that objections be recorded at every instance where an improper term is used to categorize LP-gas.

7. The Task Force reaffirms its support of CHEMTREC, the Chemical Transportation Emergency Center sponsored by the Chemical Manufacturers Association, as an integral part of any emergency response activities engaged in by NLPGA.

8. The Task Force examined several legislative proposals currently being considered to establish a federal contingency fund, called a "Superfund", to respond to and clean-up hazardous waste disposal sites and oil spills, and to compensate victims of such accidents. The Task Force does not support inclusion of LP-gas in such legislation, which was never intended to cover LP-gas releases, and RECOMMENDS opposition to the underlying principle of "Superfund" legislation.

9. Conscious of the recommendations of the NLPGA Emergency Response Task Force approved by the NLPGA Board of Directors on October 1, 1980, encouraging every shipper and every receiver to develop and implement an internal emergency response system for handling transportation incidents involving LP-gas shipments they make or receive, the Task Force discussed whether incentives should be promoted to encourage small businesses to improve their emergency response capabilities. The Task Force RECOMMENDS that the appropriate NLPGA Committees develop, publicize and promote internal emergency response procedures as approved by the NLPGA Board of Directors. The Task Force did not support tax credits or any other similar incentives which had been suggested by a recent government report.

10. The Task Force RECOMMENDS that NLPGA oppose the federal siting of LP-gas bulk plant or terminal storage. Instead, it was RECOMMENDED that such siting decisions be left in the hands of industry or, when required, state and local authorities who are better equipped to ascertain the direct impacts of such decisions.

THE FERTILIZER INSTITUTE,  
Washington, D.C. May 1, 1981.

HON. JOHN C. DANFORTH,  
460 Russell Senate Office Building, Washington, D.C.

DEAR SENATOR DANFORTH: In review of S. 960, to amend the Hazardous Materials Transportation Act, The Fertilizer Institute would like to express its concerns. Our objection centers on Section 122, Routing and Prenotification. Enactment of Section 122, as presently written, could require a retail fertilizer dealer to notify the government of every local movement of fertilizer to his farmer customers. For example, the fertilizer industry owns 250,000 nurse tanks which make several trips daily during the peak fertilizer season, transporting ammonia between the retail fertilizer dealer and the farmer. If Section 122 is enacted, these vehicles could be subject to routing regulations when pulled by the farmer between the retail fertilizer plant and his field. In addition, the implementation of routing regulations will undoubtedly delay the rail, motor vehicle, and/or water delivery of essential fertilizer. Thus, Section 122 has the potential to create fertilizer shortages during the peak fertilizer season by impeding prompt transportation.

The Fertilizer Institute, is the national industry association representing fertilizer manufacturers and retail dealers. Today the fertilizer industry utilizes every transportation mode to deliver in excess of 52 million tons of material to the U.S. farmers. Of the 52 million tons, approximately 8 million tons of fertilizers classified by the Department of Transportation as "hazardous" materials are directly applied to farm fields. The fertilizer industry must transport an additional 13.5 million tons of hazardous material to meet the demands of the U.S. farmers. All totalled the fertilizer industry transports in excess of 21.5 million tons of hazardous materials each year.

The fertilizer industry's problem with Section 122 result from 1) the potential burden on the local (25 mile radius) delivery of fertilizer to our farmer customers, 2) the potential delays in the rail, motor vehicle or water transport of essential products between manufacturing plants and the retail fertilizer dealers, and 3) the potential disruption of interstate commerce.

In regard to the transport of fertilizer materials between manufacturers and the retail fertilizer facilities, it should be recognized that the movement of fertilizer to the retail fertilizer dealer, as well as the farmer, is not predictable due to the vagaries of weather as it impacts farming operations. The transport of fertilizer is dictated by farmer demand for the product. Thus, the imposition of routing regulations will, impede the expeditious movement of fertilizer between manufacturing plants and the retail fertilizer facilities, as well as between retail fertilizer facilities and the farmer. It should be noted that the fertilizer industry is a national industry conducting business in every state. The imposition of state routing rules, affecting the transport of fertilizer, will not only impede the movement of these materials but could eliminate the transport of the essential products.

The fertilizer industry is not opposed to regulations necessary to ensure the safe transport of hazardous materials. In fact, TFI and the fertilizer industry support improved emergency response training since it has a greater potential to improve public safety in the event of a hazardous materials accident. Except for Section 122, we support S. 960.

Enactment of the routing provisions in S. 960 will adversely affect the fertilizer industry. More importantly, Section 122 could adversely affect our ability to produce food and fiber.

We hope that in your consideration of S. 960 that you will take into account these problems and either make the appropriate amendments to Section 122 or eliminate Section 122. If you have any questions, please do not hesitate to contact me.

Sincerely,

EDWIN M. WHEELER.

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